

THE INDONESIAN QUARTERLY

South China Sea Views from ASEAN

- Current Events
- Managing the Potentials of the South China Sea
- The South China Sea: Its Ecological Features and Potentials for Developing Cooperation
- Potential Conflicts in the South China Sea: In Search of Cooperation
- Jurisdiction Issues and the Conflicting Claims in the Spratlys
- Managing Potential Conflicts in the South China Sea: Political and Security Issues
- Navigation, Communication and Shipping in the South China Sea
- Internal Variables of Regional Conflicts in ASEAN's International Relations
- Book Reviews



The Quarterly

The Indonesian Quarterly is a journal of policy oriented studies published by the Centre for Strategic and International Studies (CSIS), Jalan Tanah Abang 111/23-27, Jakarta 10160. It is a medium for research findings, evaluations and views of scholars, statesmen and thinkers on the Indonesian situation and its problems. It is also a medium for Indonesian views on regional and global problems. The opinions expressed in *The Indonesian Quarterly* are those of their authors and do not necessarily reflect the opinion of the CSIS.

The Logo



To better represent the underlying ideas that gave birth to the CSIS in 1971 the Centre uses as of 1989 the logo that figures on the front cover of this journal. The original, in bronze, designed by G. Sidharta, it consists of a disc with an engraving that depicts the globe which serves as a background to a naked man with an open book laid on a cloth over his lap, his left hand pointing into the book, his right hand raised upwards. Altogether it symbolises the Centre's nature as an institution where people think, learn and communicate their knowledge to whoever are interested, to share it with them, mankind the world over being their concern and the globe their horizon. The nakedness symbolises the open-mindedness, the absence of prejudice, in the attitude of the scholars who work with the Centre, just as it is with scholars everywhere. The inscription reads "*Nalar Ajar Terusan Budi*," which in the Javanese language essentially means that to think and to share knowledge are only the natural consequence of an enlightened mind. It is a *surya sengkala*, that is *chandra sengkala*, a Javanese traditional way to symbolise a memorable year in the lunar calendar, adapted to the solar calendar system. It consists in using words that express the perceived meaning of the commemorated year while marking the year at the same time, each word having a numerical value. Thus, the inscription, in reverse order, represents the year the CSIS was established: 1971.

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From the Editor

WHAT may have appeared to be one major preoccupation, if not an obsession, for the ASEAN states at least over the past decade, for understandable reasons, has been the Cambodian conflict. In spite of continuous efforts all these years not only by the ASEAN states but also by external powers to seek a solution that would be acceptable to all parties concerned, so far that kind of solution does not seem to be in sight.

Doubts may therefore be raised as to the urgency to talk about the South China Sea at this point in time, a possible source of conflict in the future involving not only ASEAN states but other powers beyond ASEAN, and indeed beyond the region of Southeast Asia as well. Would it not appear to be simply an effort to turn away from what seems to be an insoluble problem?

It may be argued, on the other hand, that while efforts at finding a final and lasting solution to the Cambodian conflict should continue apace, one should not turn a blind eye to the possibility, or indeed the fact, that the South China Sea, whether one likes it or not, is another source of potential conflicts in East and Southeast Asia. Thus far from being untimely, serious attention to this new area of potential conflicts is long overdue. After all, tension in the South China Sea has led to incidents of armed confrontation. A clash between Vietnamese and Chinese armed forces in the area in March 1988 was a case of such "incidents."

Moreover, who knows, the lessons of the Cambodian conflict, and more importantly, the lessons from the experience of ASEAN regional cooperation, may prove useful for the solution, or the prevention, of possible conflicts arising in the South China Sea. This is the underlying idea of the initiative taken by the Directorate General for Research and Development of the Indonesian Department of Foreign Affairs under Dr. Hasjim Djalal to organise an informal meeting among ASEAN government officials and academics on the South China Sea in Bali on January 23-24 this year.

It must be made clear that the workshop was not meant to exclude any countries, let alone the littoral states of the South China Sea, from deliberations. But at that initial stage, some people from the ASEAN states, in their private capacity, would like to exchange views first on the kinds of problems that are likely to be faced, and only later would participants from the other states concerned be invited to present their views. The idea underlying this undertaking is that rather than dealing directly with the potential conflicts in the South China Sea, efforts are directed to finding areas of cooperation for mutual benefits, despite possible conflicts, among ASEAN member states, and indeed among the littoral states of the South China Sea. As ASEAN regional cooperation is likely to create a favourable atmosphere for the prevention, containment, and hopefully solution of conflicts. Hence the meeting among ASEAN participants at that initial stage, which the organizers hope would be followed at some point in the future by a larger meeting, at an informal level first, involving all the countries concerned.

The *Indonesian Quarterly* has the honour to publish, with the permission of the organizers, particularly Dr. Hasjim Djalal, most of the papers presented at that Bali meeting. For this the *Quarterly* would like to express gratitude.

The article by Dr. Hasjim Djalal was in fact presented previous to that meeting, namely, at the Institute of Strategic and International Studies (ISIS), in Kuala Lumpur, Malaysia. The last article by Paridah Abd. Samad has been specially prepared for the *Quarterly*. It does not deal specifically with the South China Sea, but it does provide a background of conflicts with domestic and regional roots, with which the region of Southeast Asia has been rife for decades.

J. Soedjati DJIWANDONO

Current Events

The January Package: Efficiency and Equity

Mari PANGESTU

ON January 29, 1990 a policy package related to the banking sector was announced. The new regulations are aimed at improving the substantive banking regulations issued in October 1988 to increase the mobilization of funds, the efficiency of the banking sector and to reduce the subsidy provided by Bank Indonesia.

In the wake of the January 4, 1990 budget speech, the package also contained distribution and equity aspects aimed at the development of East Indonesia and the small scale sector. Although the direction of the latter changes is in line with the increased emphasis on equity, the component of the policy package aimed at this objective did come as a surprise to the banking sector.

Efficiency

The main components of the package are, first, that the supply of liquidity credits from Bank Indonesia to the banking sector will be limited, although priority will be given to credits related to the development of East Indonesia. The intention to reduce the

role of liquidity credits should really not come as a surprise. In fact at the promulgation of the June 1, 1983 banking deregulation, the aim to reduce liquidity credits had already been announced. The removal of liquidity credits for exports as of March 29, 1990 had also been expected. When Indonesia signed the GATT Code on Subsidies and Countervailing Duties in 1985, it was known that the export subsidy scheme would be phased out by April 1, 1990.

Despite the intention to reduce liquidity credit in 1983, the amount of liquidity credits provided by Bank Indonesia has increased substantially since 1983. In 1989 liquidity credits still financed 29% of total bank credit or the same percentage as in 1983. The amount of liquidity credits increased from Rp 3.8 trillion to Rp 16.2 trillion by 1989. In 1989 alone the increase was Rp 3.8 trillion.

In the past credit programmes financed by liquidity credits were deemed necessary to serve certain objectives such as providing investment, small scale cooperatives and agri-

culture credits. It was argued that without government intervention the credit would not be provided. However, it has long been realized that it is a costly way to meet these objectives. The governor of the Central Bank in his January policy statement alluded to that fact. Liquidity credits are loaned out at 6% while the interest rate on SBI (Bank Indonesia Certificates) is 14% and SBPU (Money Market Securities) is 16%. Some banks end up by not using liquidity credits for the intended objective but for other credits or place them in SBI. Purchases of SBI in 1989 were close to the amount of increase in liquidity credits. The Governor thus indicated that providing liquidity through SBPU is a more cost-effective way for the Central Bank.

What are the expected effects of the fall in liquidity credits? Firstly, on the banking sector. The export credit scheme which is mostly funded by liquidity credits from Bank Indonesia at low interest and which is loaned out by Commercial Banks at interest rates below the market rate, has been a profitable and low risk activity for banks. The change in regulations will affect some of the smaller banks which have relied on this activity as a source of profits, but will probably not have a significant effect on the banking sector as a whole as the interest rate has been increased gradually and is in fact at 14%, not too far below the market lending interest rate of 19%.

Second, on exporters. Exporters will not be affected either because they could still borrow abroad at lower interest rates and if their turnover is high the increased interest cost can be absorbed. There is, however, some concern for the small exporters.

Third, the effect of the fall in liquidity credits on the money supply will be gradual

because it only applies to new credits. Export credits, which make up around one third of liquidity credits, will be phased out in the next 5-6 months while the other types of credit which have a longer maturity will take longer to phase out. There will probably be some tightening of the money supply situation by mid year and this could lead to some increase in interest rates, which at present is on a downward trend.

Other parts of the package are that credits to farmers (KUT = *Kredit Usaha Tani*) will be extended to rice and other food crop intensification. Liquidity credits from Bank Indonesia will be channelled through Bank Rakyat Indonesia while village cooperative units (KUD = *Koperasi Unit Desa*) will act as the executor of the credits. The lending rate of KUT is set in line with the market (prime) interest rate and is at present set at 16%. The KUD will receive a 7% fee to act as the executor.

The weaknesses of providing low interest credits for special programmes have long been realized, that is, the tendency to borrow more than needed leading to less than careful credit evaluation, an impression that the credit program is a welfare programme so that repayment is not thought to be necessary, result in bad debts, and abuses such as placing the money in deposits. Thus raising the interest rate of KUT to the market interest rate is a step forward in improving the incentive structure of such programmes and is based on the successful experience of the village cooperative lending scheme (KUPEDES). In the case of KUPEDES, despite the fact that the lending rate is at the market rate, the amount of credit loaned out still increases and the amount of bad debt is lower than the subsidized interest schemes. The funding of the KUPEDES scheme has also increasingly come from savings scheme.

Equity

A shift in emphasis toward equity is clear in the part of the regulation that requires banks to lend 20% of their credits to the small scale sector within one year. New joint venture banks and existing foreign banks which have expanded operations outside of Jakarta are not required to comply because they are already subject to the requirement that 50% of their credits must be export credits. Small scale is defined as credit of maximum Rp 200 million and to cooperatives or business entities with maximum assets, excluding land and buildings of Rp 600 million. Housing loans cannot be counted loans given for houses in the category of 70 m².

The policy is based on the realization that the obstacle faced by small scale businesses is not the interest rate, but the accessibility to the funds, lack of collateral and operational weaknesses in management and marketing. Implicit in the new policy is the "mission" of the banking sector to develop the small scale sector. It is assumed that direct support to the small scale sector by the government will face the constraints of lack of funds, institutional weaknesses and lack of good quality manpower to implement such a programme.

It is also thought that direct assistance may not be workable since the small scale and cooperatives sectors will not have any incentive to comply with the recommendations. A "carrot and stick" approach of tying the recommendations with provision of credits will provide a better incentive structure. Banks that have an interest to get their money back will in turn have an incentive to introduce modern accounting methods, management and marketing skills.

The carrot-and-stick approach is also ap-

plied to banks. Compliance by banks to the 20% target is tied to the "soundness" of the banks and a sound bank is eligible for privileges such as foreign exchange license, liquidity credits for existing programmes etc.

Although the basic principles of the policy are acceptable, there could be implementation problems. Is a bank which provides 20% of its credit to the small scale sector healthier than one that does not? It is possible that the small scale sector could increase the bad debt component of the bank, especially if the bank is inexperienced in handling small scale credits. Thus the weight given to compliance of the 20% rule in the overall soundness of the bank becomes very important. If it is set too high there will be efforts to increase lending to the small scale sector only to achieve the target and to "fudge" credit categories so that it qualifies as small scale. These efforts represent misallocation of resources.

The capability of supervision by Bank Indonesia become much more important when one has to consider its task in monitoring the compliance to this rule, especially considering that their supervisory efforts are already being taxed by the October banking deregulation which has seen the burgeoning of new banks and numerous branches. Practical problems faced will be how to determine that the assets of the entity in question is Rp 600 million if these entities do not possess formal accounting records and how to check that the amount of credit given is only Rp 200 million which applies as a total, that is, total credit given per customer must be limited to Rp 200 million from all sources.

There may also be some transitional problems. As expected, Big Banks, namely State Banks outside of Bank Rakyat Indonesia,

have not been inclined to give credit to small scale businesses while smaller banks have provided credits to this sector. This means that there has been a natural market segmentation. With the 20% target it is also hoped that the big banks will cooperate with smaller banks to provide the small scale credits. However, it is likely that bigger

banks will "raid" the proven small scale credits from the smaller banks given the one year deadline, and this could lead to transitional problems. In the long run, of course, the net result should be positive since increased competition for that sector should improve availability and quality of financial services.

Policy Options After the Informal Meeting on Cambodia

A.R. SUTOPO

DISAPPOINTMENT may not be a strong word but enough to illustrate the general feeling in Indonesia concerning the failure of the limited Informal Meeting on Cambodia (IMC), held in Jakarta between 26 and 28 February 1990. The main goal of the IMC was to prepare a conducive environment for the next International Conference on Cambodia (ICC) to settle the Cambodian conflict. The meeting was attended by the four conflicting parties in Cambodia, the ASEAN member states, Laos, Vietnam, France, Australia and the United Nations. With the failure of the IMC, the prospect of the next ICC seems to be uncertain.

The limited Jakarta meeting failed to bring about a tangible result for the solution of the Cambodian conflict, and as the meeting ended, there was no communique nor

statement produced. Indonesia's initiative to hold the meeting was based on the interpretation of events on the field which were seen as indicating that fightings in Cambodia had been increasing since Vietnam unilaterally announced the withdrawal of its last military forces in Cambodia at the end of September 1989, a situation that would create a prospect of deadlock or uncertainty towards further efforts in the settlement of the conflict. But the initiative was also based on the mandate given to Indonesia, as co-chairman (with France) of the ICC held last year in Paris, to continue consulting all parties and countries concerned with a view to facilitating a comprehensive settlement of the conflict and to reconvening the next ICC at the appropriate time afterwards.

Prior to the holding of the IMC three events related to the Cambodian conflict had

taken place that led Indonesia to believe that by reviving limited, informal negotiations some degree of progress towards a comprehensive solution of the conflict might be attained. The first was an important, detailed proposal made by the Australian foreign minister in November last year to overcome the deadlock, particularly with regard to an interim administering authority in Cambodia to be carried out by the United Nations. The Australian proposal was discussed, but the failure of the IMC was in stark contrast to the Australian inexhaustible effort in preparing the *working paper* of about 200-page length. The second was the high-level meeting of the United Nations Security Council's permanent members concerning the Cambodian conflict in Paris in mid-January 1990 and in New York about a month later that produced a set of guiding principles for the resolution of the conflict and enhanced the UN role in Cambodia. This, together with the previous results reached in the Jakarta Informal Meetings I and II and in the Paris Conference, seemed to indicate that the most important external major powers¹ influencing Cambodia have now been completely supportive of the settlement to the conflict. And the third was the meeting between Norodom Sihanouk as President of the coalition government and Hun Sen in Bangkok a few days before the IMC started, revealing their acceptance of an appropriate level of the UN role in Cambodia and the establishment of a "National Supreme Council" as a symbol of Cambodian sovereignty and national unity. This gave an impression that there was basically no serious difficulty between the Hun Sen

regime and Sihanouk, which was an important development for reconciliation at least between the two in the Cambodian political context. But those encouraging hopes were ruined in Jakarta.

The crux of the problem now remains on the inability of the Cambodian parties to reach an accommodation on the nature of the interim government which would temporarily administer Cambodia until a general election is held, and on the level of enmity between the Phnom Penh regime and the Khmer Rouge. In Jakarta the National Government of Cambodia (NGC), the new name of the tripartite coalition government used to be known as the Coalition Government of Democratic Kampuchea (CGDK), demanded the dismantlement of the Phnom Penh regime under Hun Sen and the establishment of a quadripartite interim government representing the Cambodian factions on an equal basis. Since the negotiations in the Paris ICC the Khmer Rouge have been strongly demanding this quadripartite principle. Meanwhile, the State of Cambodia (SOC), the new name of the People's Republic of Kampuchea (PRK) represented by Hun Sen, has continued to insist on a two-party interim government, consisting of representatives from the NGC and the SOC. This demand shows that the SOC regime does not accept a quadripartite interim government for fear of being outnumbered by their opposing forces and, more importantly, for fear of the Khmer Rouge sabotaging Phnom Penh's consolidation of power.

Of particular importance, however, is the gap between their attitudes on the issue of national reconciliation in Cambodia. The Khmer Rouge and the Hun Sen government seem to define the terms differently. Owing to their enmity, the IMC was shattered by

¹See also A.R. Sutopo, "Beyond JIM II: Kampuchea Minus Illusions," *Indonesian Quarterly*, Vol. XVII No. 2 (Second Quarter, 1989), pp. 108-112.

the debate on something which appears to be peripheral issues unacceptable to each in draft communique, namely the return of the genocidal Khmer Rouge to power in Cambodia on the one hand, and the issue of the Vietnamese settlers on the other. But more fundamentally, for Hun Sen and his regime, reconciliation means the exclusion of Khmer Rouge top leaders from power in the Cambodian politics and from participation in the formation of an interim government which has been agreed upon not only by all Cambodian parties but also by external powers. The interim government should be formed after Vietnam withdraws its forces and before a national election is held. In this connection Phnom Penh and Vietnam try to assure the world that Vietnam has completed the withdrawal of its troops from Cambodia. But the NGC does not agree at that point, and particularly the Khmer Rouge continue to demand the repatriation of the so-called Vietnamese settlers in Cambodia. In the language of the NGC, particularly the Khmer Rouge, they are fighting against Vietnamese colonization of Cambodia perpetuated through the Phnom Penh regime.

On the other hand, the SOC under Hun Sen offers concessions to the other resistance parties in the coalition government, particularly to Norodom Sihanouk. These include their readiness to accept the other parties joining and sharing power in an interim government, to rename the state from the PRK into the SOC, and to change its flag and national anthem so as to accommodate the other parties' demands. Phnom Penh has also adopted a new constitution, giving more room for participation by other parties in the SOC although it still retains the Phnom Penh regime's supremacy. Phnom Penh has even revived Buddhism as the state religion. Moreover, in social and economic affairs,

private properties are legalized and inheritance rights are acknowledged.

However, whatever harm they have done to the Khmer people, the Khmer Rouge are a fact of life in Cambodia, and in this own right are a power to be taken into account in the equation of power in Cambodia. As long as the level of enmity between Phnom Penh and the Khmer Rouge remains as it is now, it seems unlikely that Cambodia will be able to form an interim government in the near future unless these two contending factions compromise with one another, or else one party must totally eliminate the other strength. It is in this respect that Indonesia may be able to influence the course of events in Cambodia by pursuing a certain course of diplomatic efforts.

Such efforts should be made in accordance with Indonesia's still valid guiding principles in settling the Cambodian conflict, namely, that the conflict be settled through peaceful, political solution; that Indonesia be neutral on matters concerning the Cambodian domestic political struggle; and that Indochina be composed of three separate states. With regard to the last principle, as events in Cambodia have shown, it seems clear that in the foreseeable future Vietnam will not be in a position to integrate the Indochinese peninsula into a single state often alleged in the past. Thus the room for manoeuvre for Indonesia's diplomacy would mainly relate to the first and second principles which are still pursued through various means towards a comprehensive solution to the Cambodian problem.

Indeed, prior to the meeting there was hardly anyone optimistic enough to believe that the IMC would make a breakthrough in settling the internal rifts among the Cambodians. Hence, the Indonesian Foreign Minis-

ter, Mr. Ali Alatas, said at the opening session of the IMC that the IMC would pursue only modest purposes, namely "to endeavour to make further progress in elaborating on some of the more detailed aspects of an enhanced UN role" in settling the Cambodian problem by using as a basis of discussion the Australian proposal, and "to bridge the divergent positions of the contending parties on these detailed aspects." In a sense the failure of IMC can be seen as at least a partial failure of Indonesia's regional diplomacy to help create an environment conducive to peace for a not so distant neighbouring country. However, this should not diminish Indonesia's stamina and diplomatic efforts to pursue that objective.

Indeed, in the last two decades Indonesia has had a long up-and-down record in the effort of helping Cambodia settle its national and security problems, particularly since General Lon Nol launched a *coup d'état* in March 1970. The continuing internal conflict in Cambodia, mainly between the pro-American Lon Nol clique versus the Royal Government of National Union, GRUNK, comprising the Cambodian leftists and the royalists, supporters of Sihanouk, who was himself in exile, had made the then Indonesian Foreign Minister, the late Mr. Adam Malik, convene an International Conference on the situation in Cambodia, with the hope of producing a formula to put an end to the Cambodian conflict. However, this conference did not bring about a success for Indonesian diplomacy. Instead, Indonesia's initiative was seen by many, particularly among neutral and socialist countries, which were invited to the conference but failed to attend, as merely an indirect justification of the United States limited action on Cambodia (in the context of conflict and war in

Vietnam) and the recognition of the Lon Nol government. When in April 1975, the Lon Nol regime was finally overthrown by the Khmer Rouge-led GRUNK, Indonesia was forced to recognise the new regime, then called Democratic Kampuchea, although for about three years afterwards diplomatic missions between the two were left vacant.

But the pattern of Indonesia's recognition of government in a country facing domestic struggle for power such as Cambodia changed when the Khmer Rouge government was ousted from Phnom Penh in the beginning of 1979, soon after Vietnamese forces had invaded the country and then established a new regime under the leadership of Heng Samrin. Since then Cambodia has caused considerable concern in Indonesia's regional diplomacy. In spite of its decision to remain neutral in the Cambodian internal political strife from the outset, Indonesia has thus far refused to recognise the regime that controls not only the capital city but also the largest portion of the Cambodian territory. On the contrary, it continued to recognise the Pol Pot government and later, via ASEAN's coordinated effort in retaining Democratic Kampuchea's seat in the UN General Assembly in September 1979, has since then recognised the "coalition government" formed by the resistance movements of the three conflicting factions, the Khmer Rouge, the Sihanoukists and the Nationalists, whose "government" and "territorial control" are not effective at all. However, owing mainly to Sihanouk's figure, it has enjoyed wide international support. In other words, instead of recognising the Heng Samrin regime, the predecessor of SOC, which controls Phnom Penh and the largest portion of the Cambodian territory, if with Vietnamese military backup at least in the

past, Indonesia recognises a kind of Cambodian government in exile, the CGDK.

In a way, it is obvious that Indonesia, in its Cambodian policy and diplomacy, has been compelled to pursue solidarity with its regional partners in ASEAN, which has been needed in such an environment where ASEAN has been considered as constituting a corner stone in Indonesia's foreign policy, and the Cambodian problem has been used as a uniting factor for the still-fragile intra-ASEAN relations. Then a unified ASEAN policy on the Cambodian problem has been set: (1) that the Cambodian problem has to be settled peacefully; (2) that foreign forces should be withdrawn from Cambodia; and (3) that Cambodians should determine their own social, political and economic systems. However, in the past these policies have never concealed the differences among individual ASEAN member states' attitudes on Cambodia, particularly between the hawkish, anti-Vietnam lines adopted by Thailand and Singapore on the one hand, and the more moderate lines pursued by Indonesia and Malaysia on the other. In other words, Indonesia seems to have placed its Cambodian policy under an ASEAN solidarity which has been given higher priority than its own independent policy on Cambodia.

The ASEAN member states have been forced to cultivate the Cambodian anti-Vietnam resistance factions to form, with the assistance of ASEAN members, a superficial Coalition Government of Democratic Kampuchea and to support their cause to drive back Vietnam from Cambodia. In so doing, ASEAN has put its hand more directly in Cambodia by siding with the CGDK. Such a general cause against foreign intervention has been viewed as being in

ASEAN's interest because of the position of Thailand, which in the context of the Cambodian conflict has to consider itself as a "front-line state" vis à vis Vietnam's hegemonic objective in Indochina, as objective which Thailand and some other ASEAN countries regard as an immediate threat to the region. During those difficult years, it seemed plausible for the ASEAN members to pursue a Cambodian policy based on "the leadership of a frontline state."

But the environment, challenges and conditions faced by ASEAN have gradually changed. For the last few years, contrary to the wider international support given to the "coalition government" of NGC, the direction of changes has been in favour of the Phnom Penh regime. As a frontline state, Thailand has declared a new policy on Indochina, by pledging to change Indochina from a battle-ground into a potential market for its industry. Along with this, Thailand has sought to improve its relations with Hanoi and to open up an "informal" dialogue with Hun Sen. In this spirit, recently Thailand has shown a more assertive diplomacy towards Indochina in general and towards the solution of the Cambodian conflict in particular.

Meanwhile, despite charges of corruption, weaknesses, and dependency on Vietnam directed towards the government in Phnom Penh, Hun Sen and his regime are increasingly enjoying more external support. His stature in international diplomacy is improving, with the latest development of frequent "informal" talks with the Thai Prime Minister, Mr. Chatichai Choonhavan, with Sihanouk in France and in Thailand, and not the least of all his ability shown in both the Jakarta and Paris negotiations. There also seems to be greater confidence on the part of his government to secure control over the

largest part of Cambodia amidst the psy-war launched by the Khmer Rouge in particular, and the NGC in general since October last year, as the resistance forces are reported to have gained the upper hand in the military campaign. Hence greater external sympathy has been shown for the Phnom Penh regime. The SOC is now more than just a *de facto* government in Cambodia.

So, what is the implication for Indonesia's Cambodian policy? As the ASEAN environment and the Cambodian *real politik* have undergone substantial changes, Indonesia may have to make some adjustment in its Cambodian policy if it should continue its neutral position with regard to the Cambodian internal strife. For the moment efforts to settle the Cambodian conflict may have reached a stalemate. But most indications show that the direction of the Cambodian politics is more likely to be determined by the government in Phnom Penh than by the opposing coalition government. For this reason, Indonesia's continuous support for the tripartite coalition of the NGC may no longer be in accordance with the *real politik* in Cambodia.

Moreover, its support for the coalition government will hinder its manoeuvre in pursuing a policy that will result in a more constructive UN role in Cambodia, as implicitly pursued through the IMC, for this does not reflect Indonesia's neutrality. Indonesia must instead, take a more active part in directing its policy towards "genuine" neutrality, namely, by terminating its recognition of the coalition government without necessarily recognising the Phnom Penh regime, and stop supporting their seat in the UNGA. This may pave the way for new blood to be injected into the efforts to bring peace in Cambodia through further forums agreed upon by the parties concerned. Such

a policy change can add more weight to the pursuit of greater UN role in Cambodia as envisaged in the IMC. Indeed, such a policy should not contradict its status as an *interlocutor* in the context of finding ways and means to settle the Cambodian conflict through political channels.

The logic is that Indonesia in this regard should neither become a player who is directly involved in Cambodian domestic affairs nor merely become a passive bystander witnessing the sorrows of the Khmer people. But the negative side of such a neither/nor policy is that Indonesia's ASEAN policy may possibly be complicated by this move, particularly in the sense that its partners in the association might question Indonesia's motives in Southeast Asia, a fear shared by many Indonesians.

Whether such fear is well founded is still difficult to determine. However, what is clear is that ASEAN has learned an important lesson in welding solidarity among its member states in many fields with direct political and security impacts. This includes bilateral disputes such as those on Sabah, territorial claims and border demarcations, socio-cultural ramifications between states, as well as economic quarrels. None of them has broken up ASEAN. Rather, they have served to make the ASEAN member countries become more mature in their dealings with one another. Would it be more likely that policy changes in a member state on a regional issue with less direct consequences to intra-ASEAN relations such as the Cambodian problem, will ruin ASEAN? In other words, if *real politik* in Cambodia requires Indonesia to make policy adjustment, it has to be made as soon as possible while keeping in mind the importance of ASEAN in its foreign policy. ASEAN has now become

more mature in dealing with various problems directly and indirectly affecting each member state. For that reason, ASEAN as an organization as well as its individual member states have to realize that the association has been strong enough to face possible changes in policy lines on certain regional issues without posing a serious challenge to its foundations. Thailand's new Indochinese policy has testified this.

Finally, such a policy at this stage may stimulate the acceptance of an enhanced UN role in Cambodia and let the Cambodians determine their own future. But this would never materialize unless external powers restrain their support for the conflicting parties in Cambodia. In this regard, the United States, China and the Soviet Union must substantially reduce their aid and supply of arms for the warring Cambodians.

Managing the Potentials of the South China Sea

Ali ALATAS

THE strategic importance of the South China Sea is, of course, beyond question. As a semi-enclosed sea linking the Indian and Pacific Oceans and located between continental Asia and insular Southeast Asia, it encompasses important sea lanes of communications, and indeed, the Straits of Malacca and Singapore at its Southern entrance rank among the busiest straits in the world. Politically, the South China Sea is bordered by a region of littoral and hinterland states with an unfortunately long history of endemic conflict and strife and of recurrent intervention by and interplay with non-regional powers. More recently, the situation portends to be further exacerbated by conflicting sovereignty and jurisdictional claims (of which the multi-nation dispute over the Paracels and Spratly Islands is but one example), as well as by unresolved questions pertaining to the delimitation of territorial seas, continental shelves and exclusive economic zones. Add to this complex of issues the general expect-

tation of large potentials of oil and gas, mineral and living resources which the area is said to contain, and one can hardly avoid the first impression that the South China Sea, after Cambodia, may well become the next, acute source of conflict in the region.

By the same token, however, the growing realization of all these factors of potent controversy, has also moved the bordering states to direct greater and more urgent attention to the South China Sea, with a view to transforming potential sources of conflict into constructive forms of cooperation for mutual benefit. This is precisely the purpose to which our present meeting is dedicated.

All Southeast Asian states bordering the South China Sea share a vital interest in fostering peace, stability and harmonious cooperation in their immediate environment as a necessary condition within which to ensure the stability and national development in their respective countries. The ASEAN countries, on their part, have for the past two decades been actively engaged in regional cooperation and have in the process

Excerpt of the address to Bali Workshop on the South China Sea, 1990.

gained valuable insights and experience in the habits and practices of cooperating in meeting common problems as well as in the peaceful resolution of conflicts. In the regional context, there are hopeful signs that the Cambodian problem may be entering the final stages towards a comprehensive solution. And globally, growing *rapprochement* in East-West relations, the consequent reduction in international tensions and the increasing emphasis being given to problems of economic development and of environmental protection are changing the perspectives of the world community.

I believe all these factors and trends augur well for our present resolve to direct greater attention and effort to the management of the potentials of the South China Sea and, in this endeavour, to bring to bear

the spirit and practices of peaceful cooperation rather than of confrontation.

I am given to understand, that instead of focussing on the potentials for conflict, as subsumed in such questions as overlapping sovereignty and jurisdictional claims, this Workshop will discuss a wide range of issues and areas of possible cooperation, including in resources management, communication, shipping, navigation and the related aspect of safety of maritime passage, environmental protection and scientific research. This is indeed the right approach. For by expanding cooperation in these areas, on the basis of common interest and mutual benefit, a more conducive atmosphere will be created for peaceful cooperation and negotiation in addressing potential conflict-situations as well.

The South China Sea: Its Ecological Features and Potentials for Developing Cooperation

Aprilani SUGIARTO

Introduction

THE waters and islands between Asia and Australia and between the Pacific and the Indian Oceans form a geographical unit because of their special structure and position. In geographical terms, the whole region is part of Asia and is referred to as Southeast Asia. In oceanographic terms, the waters of the region are part of the Pacific Ocean, which is separated from the Indian ocean by the islands of Sumatra, Java, and the Nusa Tenggara (Lesser Sunda). The seas in the region are filled with water from the Pacific, to which they provide access.

The Southeast Asian waters comprise the Andaman Sea, the Straits of Malacca and Singapore, the South China Sea, the Indonesian and the Philippines archipelagic waters, and the Arafura, the Celebes Seas. The whole body of water covers 8.94 million square kilometers in area, which represents about 2.5 per cent of the world's ocean surface.

This paper briefly reviews the environmental, ecological and oceanographical features as well as the potentials of the South China Sea for developing cooperation in marine scientific research and the protection of the environment in the region.¹

The Physical Setting

The South China Sea is a semi-enclosed sea bordered by the ASEAN member states

¹For more detailed review of the South China Sea, see George Kent and Mark J. Valencia (Eds.), *Marine Policy in Southeast Asia* (Berkeley: University of California Press, 1986); Aprilani Soegiarto, "The Oceanographic Features of the Southeast Asian Waters," in *Southeast Asian Seas: Frontiers for Development* ed. Chia Lin Sien and C. MacAndrews (MacGraw Hill Southeast Asian Series: 1980), pp. 20-47; idem, "Oceanographic Assessment of the East Asian Seas," in *Environment and Resources in the Pacific* ed. A.L. Dahl and J. Carew-Reid (UNEP Reg. Seas Program Study no. 69, 1985), pp. 173-184; K. Wyrski, *Physical Oceanography of the Southeast Asian Waters* (California: Naga Expedition Report No. 2, Scripps Inst. Oceanography, 1961).

(Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand), the Indochina states (Vietnam, Kampuchea), China, Hongkong and Taiwan. It is connected to the Java Sea and the Straits of Malacca and Singapore in the South and to the Straits of Taiwan and Bashi Channel to the North. For the purpose of discussion the South China Sea also includes the adjoining Gulf of Thailand and the Gulf of Tonkin.

The distribution of land and sea in the region is of rather recent geological origin, largely a product of the retreat of the continental glaciers of the Northern hemisphere and their final disappearance about 10,000 years ago. Before that, the islands of Borneo, Sumatra and Java were joined to the mainland of Asia, and much of the Southern part of the South China Sea was dry land.

Volcanism, coastal instability and the high rate of erosion and deposition associated with a humid tropical climate have produced substantial changes in land distribution in the region. Extensive coastal plains are found on the Chinese mainland opposite the island of Hainan, on the West coast of Taiwan, in Central and Southern Vietnam, and on many parts of Borneo. Where the large rivers enter the sea, deltas are formed, and shallow offshore waters are turbid but rich in nutrients providing the basis for high productivity fisheries of the region, such as the Red and Mekong Rivers in Vietnam and Chao Phraya in Thailand.

Coral reefs and mangroves are predominant coastal ecosystems in the South China Sea. Reefs occur along the more exposed coasts and around small islands where river run-off is minimal. On the other hand, mangroves are found in association with rivers, estuaries, and sheltered bays. Both ecosystems support many valuable but

vulnerable species and their conservation and protection are increasingly becoming the concerns of the region.

The Southeast Asian seafloor is characterized by a relatively flat continental shelf that extends from the coast to about 200m in depth and has numerous islands. The continental shelf depths in the South China Sea are between 40 and 100m. The depths in the Gulf of Thailand are no greater than 80m.

However, the bottom topography of the central part of the South China Sea is rather interesting. One can find many deep and narrow valleys up to more than one thousand meters in depth interspersed with steep underwater plateaus. Some of the peaks even emerge to the surface as islands. The more well known of these are the Paracels, sitting on a broad bench with depths of 200 to 1,500m, and the Spratly Islands shown on many nautical charts as the "Dangerous Ground," West of the Philippine island of Palawan.

The Asia mainland shelf reaches a maximum depth of 278m between the Islands of Hainan and Taiwan and is relatively featureless. It continues along the mainland of China and narrows to about 50 miles South of Hainan. Depths are 60 to 80m in the Taiwan Strait and 20-40m in the Hainan Straits. The mainland shelf includes all of the Gulf of Tonkin, which has a central valley of 70m in depth. The shelf narrows off the coast of Vietnam and broadens into the Sunda Shelf, South of Cam Ranh Bay.

Monsoonal Influence on the Oceanographic Features

Located between the Asian and the Australian continents, the Southeast Asian

region is strongly influenced by the monsoons. The Southeast Asian waters are thus ideal for studying the effects of the monsoons on both water circulation and the seasonal distribution of its physical, chemical, and biological properties. In describing the monsoonal influence on the oceanographic features in the South China Sea, it is impossible to separate it from the larger phenomena occurring in the whole Southeast Asian seas and the interactions between the Pacific and the Indian Oceans.²

The equatorial pressure trough moves according to the position of the sun, crossing the Equator twice each year. In the Northern summer, a low pressure area develops over the Asian continent as an extension of the equatorial pressure trough. In winter, a high pressure area is formed over the continent, forming part of the subtropical high pressure system. The monsoons develop between these winter hemisphere "high" and "low" in the other hemisphere. Because the pressure distribution is stationary, the winds are rather constant, especially over the sea. The wind forces are, however, generally small. Storms and typhoons are observed only over the Northern parts of the South China Sea and the Philippines, over the Andaman Sea, and North of Australia. During the full monsoon the trough is deviated over land in the direction of the monsoon, owing to thermal influence.

The North monsoon in Southeast Asia last from December to February and the South monsoon from June to August. The rest of the year represents the transition from the North to the South monsoons (March-May) and from the South to the North monsoons (September-November).

²See also Wyrski, *Physical Oceanography*; Soegiar-to, "Oceanographic Assessment."

The variation of the atmosphere circulation described above parallels the corresponding variation of the water circulation. Because of the high constancy of the monsoons and the regularity of appearances, the ocean currents show the same characteristics. Just as the monsoons change direction twice a year and are practically reversed at the time of their strongest development, the oceanic circulation is also reversed over large areas. This complete reversal is typical of the circulation in these waters (Figure 1 and 2).³

Notes on the Existing Marine Scientific Research in the Region

The distribution of water and land in the Southeast Asian region is probably one of the most complex structures on earth. The numerous large and small islands divide the waters into different seas connected by many channels, passages, and straits. The complexity of the region is the reason why it has drawn many major international oceanographic expeditions, such as the *Challenger* (1872-1875), the *Gazelle* (1875), the *Valdivia* (1899), the *Siboga* (1899-1900), the *Planet* (1906-1907), the *Snellius* (1929-1930 and 1984-1985), the *Albatross* (1948), the *Spencer F. Baird* (1947-1950), and the *Galathea* (1951). In recent years, a few oceanographic cruises have been organized, locally or as part of some cooperative regional studies, such as the Intergovernmental Oceanographic Commission (IOC) Cooperative

³For more detailed description of the surface current systems in Southeast Asian Waters see, IOC/IPFC Secretariat, *Preliminary Review on the State of Marine Pollution in East Asian Waters* (IOC/FAO/UNEP International Workshop on Marine Pollution in East Asian Waters, Penang, 1976); Wyrski, *Physical Oceanography*.

Figure 1



Central surface current pattern of Southeast Asian Waters during the North Monsoon, Dccember-May (after Soegiarto, 1985).

Figure 2



General surface current pattern of Southeast Asian Waters during the South Monsoon, June-November (after Soegiarto, 1985).

Study of Kuroshio, which covers also the South China Sea, and the International Indian Ocean Expedition (IIOE). We are thus fortunate that as the results of those international expeditions, we have a fairly good picture of the general oceanographic characteristics of these waters.⁴

The geological and geophysical cooperative research in the region, in particular in the exploration for oil, gas and mineral resources in the South China Sea and the surrounding seas, have been carried out in many cruises under the supervision and coordination of the CCOP (Committee for the Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas).

Table shows the various information related to the dependency on marine and coastal resources of the six member states of ASEAN. At present sufficient knowledge and experience in this region are still very limited in order to make decisions on alternative courses of actions for developing and managing the marine and coastal resources. Therefore, under the framework and guidance of the ASEAN Committee on Science and Technology (COST), a concerted marine scientific regional cooperative programme is established. The cooperative programme includes, among others, improved communication and coordination throughout the marine scientific and technological community in the region, establishment of regional cooperative scientific research, upgrading the quantity and quality of the manpower and expanding and improving the research facilities. The ASEAN Subcommittee on Marine Sciences was estab-

lished to coordinate and supervise those regional programme activities. The cooperative programmes include among others,⁵ ASEAN-Australia Cooperative Project on Marine Sciences, which consists of two components: (1) living coastal resources with emphasis on mangrove, coral reef and soft bottom communities; (2) regional ocean dynamics with emphasis on the study of tides and tidal phenomena; and (3) ASEAN-US Cooperative Project on Coastal Research Management. ASEAN-Canada Cooperative Project on the Establishment of criteria on the development and management of living marine resources and human health protection.

At present, two additional cooperative projects are still under consideration. They are ASEAN-UNDP Cooperative Project on Seagrass restoration for fishery development in coastal areas, and ASEAN-EC Cooperative Project on Oceanography and Pollution monitoring in the ASEAN marine region.

Other cooperative marine scientific research projects still in the development stage are those of the Subcommittee on the Western Pacific of the Intergovernmental Oceanographic Commission (IOC Subcomm. WESTPAC). In its fourth Session (Bangkok, 22-26 June 1987), WESTPAC proposed a number of regional programmes that could also be implemented in the South China Sea. Among others are cooperative research on margins of active plates, banding of porites corals as a component of ocean climate studies, ocean dynamics in the Northwest Pacific, assessment of river inputs in the sea in the WESTPAC region, and

⁴Wyrski, *Physical Oceanography*; Aprilani Soegiar-to and S. Birowo (Eds.), *Atlas Oceanologi Perairan Indonesia dan Sekitarnya*, vol. 1; *Status Pengetahuan Oceanologi di Indonesia* (Jakarta: LON-LIPI, 1975).

⁵ASEAN Working Group on Marine Sciences, *Regional Cooperation in Marine Sciences: Review of Programmes, Results and Achievements*, Report to the ASEAN COST, 1989.

monitoring of heavy metals and organochlorine pesticides using mussel watch approach.

In addition, IOC has also a number of global programmes that have been or can be implemented in the Southeast Asian Seas, in particular the South China Sea. These include TOGA (Tropical Ocean Global and Atmosphere Programme), WOCE (World Ocean Circulation Experiments), Tsunami Warning System (TWS), GIPME (Global Investigation of Pollution in the Marine Environment), and GLOSS (Global Sea Level Observing System).

Protection of the Marine Environments

It has been fully recorded that the marine and coastal region of Southeast Asia is pro-

bably one of the world's most productive areas. Blessed with a warm, humid tropical climate, and high rainfall, it allows extensive coral reefs and dense mangrove ecosystems to flourish along the coastline. Owing to the economic benefits that could be derived from these rich and diverse ecosystems, the coastal zones of Southeast Asia are densely populated. Over 70% of the population in the region live in the coastal areas, resulting in a rather high level of exploitation of the natural resources and the degradation of the environment. Population pressures associated with high economic activities have caused large-scale destruction and serious degradation of the coastal and marine environment. Increasing pollution, both land and marine based, has in the last decade compounded the problems faced by the Southeast Asian region.

Human existence depends on a stable and sustainable natural resource base. The

Table

INFORMATION RELATED TO MARINE AND COASTAL ZONE IN THE ASEAN MEMBER STATES

Information on Country	Land Area (1,000 Km ²)	Marine Area Including 200 Miles of Extended Jurisdiction (1,000 Km ²)	Length of Coast- line (Km)	Areal of Mangrove (1,000 Ha)	Population in 1988 (Million)	Percent of Population Live in Coastal Zone	GNP Per Cap. 1988 (US\$)
Brunei Darussalam	5.8	0.7	130	18.4	0.2	86	17,000
Indonesia	1,904.0	6,841.7	81,000	4,250.0	175	70	550
Malaysia	303.8	138.7	4,800	West: 113.3 East: 538.9	16.9	60	1,775
The Philippines	297.0	551	18,417	106.1	58.7	67	630
Singapore	0.6	0.1	193	1.8	2.6	practically 100	7,550
Thailand	513.0	94.7	3,219	287.3	54.5	Approx. 60	860

marine and coastal environments in South-east Asia harbour such a resource base. Thus there is a value in maintaining the marine and coastal environments in a state of supporting sustainable use of marine resources. On the other hand, overuse of marine resources has implications for the long-term viability of the resource base. This could create tensions and conflicts between policies for developing marine and coastal resources on the one hand and conserving and protecting them on the other. *Development* versus *conservation* issues in this region include over-fishing, destructive fishing methods, habitat destruction, conservation of endangered marine species, and marine pollution.

As a result of the new UN Convention on the Law of the Sea (UNCLOS), coastal states are obligated to protect and preserve the marine environment and to cooperate directly or through international organizations. An action plan for the conservation of nature in the ASEAN region has recently been formulated by the IUCN (International Union on Conservation of Nature). Priorities set by this plan are establishment of a network of natural reserves in the ASEAN region; enforcement of measures to protect endangered species; establishment of a mechanism for information exchange on research and management; and establishment of a regional training programme on conservation management.

The need to maintain essential ecological processes and life-support systems to preserve genetic diversity, and to ensure the sustainable utilization of species and ecosystems have been emphasized. A network of nature reserves, such as marine parks, biosphere reserves, and wild life sanctuaries, has been regarded as one of the most effective ways to

conserve ecosystems and the genetic resources they contain.

On marine pollution, Part VII of the UNCLOS entitled "Protection and Preservation of the Marine Environment," provides the basis for the enforcement of the provision. For example, Articles 212-213 deal with the enforcement of regulations designed to prevent, reduce, and control pollution. Articles 223-233 prescribe various safeguards that must be obeyed in carrying out enforcement procedures.

The problem of enforcement of regulations against pollution of the sea by toxic, noxious or radioactive materials, has two aspects, one concerning pollution from mobile shipboard sources, and the other from fixed sources, such as oil wells and coastal sites. The principal source of shipboard pollution is from tankers transiting the region or calling at the oil terminals.

The UNEP (United Nations Environmental Programme) has supported a number of programme activities related to marine and coastal environments in Southeast Asia such as activities under the Regional Programme on East Asian Seas, which is concentrated in the ASEAN region. The UNEP implementing counterparts in ASEAN are COBSEA (Coordinating Body of Southeast Asian Seas) and AECE (ASEAN Expert Group on Environment), which now has been elevated to become ASOEN (ASEAN Senior Officials on Environment).

In 1988 UNEP, in Cooperation with COBSEA and AECE, formulated an ASEP III (ASEAN Environment Programmes III), a five year plan that will be carried out between 1988 to 1992. The ASEP III is the continuation and extension of the ASEP I (1978-1982) and ASEP II (1983-1987). The

ASEP III has been officially endorsed by COST, ASC (ASEAN Standing Committee) and the Third ASEAN Ministerial Meeting on the Environment.

Six areas have been given high priority in the ASEP III, namely, environmental management, nature conservation and terrestrial ecosystem, industry and environment, marine environment, urban environment, and environmental education, training and information. With the catalytic role of UNEP, ASEAN has adopted the "Action Plan for the Protection and Development of the Marine Environment and Coastal Areas."

Problems and Constraints for Cooperation

The last two sections have enumerated, not too exhaustively, various marine scientific researches and programmes on environmental protection in the region ranging from resources oriented activities (renewable and non-renewable), to (a) marine and coastal environments; (b) global climatic change; (c) research, monitoring and abatement of marine pollution; (d) physical, chemical, biological and geological oceanography; (e) Tsunami and other ecological hazards. However, there are some problems and constraints in implementing them in the South China Sea:

- a. Not all of those programmes have been planned to be implemented in the South China Sea. In fact most of them are carried out only in the Southern part of the South China Sea, in particular around the ASEAN region. Non-ASEAN coastal states around the South China Sea have to be consulted and invited to participate

in the programmes. One of the main problems in this regard is that procedures, mechanisms and institutions to be used to organize such programmes are yet to be developed.

- b. Most of those cooperative programmes are still financially dependent on the dialogue partners and international as well as regional organizations for their implementation. The participating countries in the region could offer only counterpart budget in kind and services and almost none in real cash.
- c. Based on the new concept in the Convention on the Law of the Sea that extends the jurisdiction of coastal states to 200 nautical miles from their baselines, there is virtually no unclaimed area in the South China Sea today. Compounding this problem, some of the claims are overlapping. It is estimated that probably 90 per cent of the living resources and almost all of the presently exploitable non-living resources are found in the 200 mile EEZ. Therefore marine scientific research is particularly important to the development and management of resources in the EEZ. According to the new UNCLOS, consent has to be obtained from the relevant coastal state whenever research activity in its EEZ or its continental shelf is envisaged.

Possible Institutional Arrangements

In formulating, developing and implementing regional cooperation on marine scientific research and the protection of marine environment in the South China Sea, there are a number of regional and international bodies that can be activated. Some of them are ASEAN (the Association of South-

east Asian Nations), in particular, COST (Committee on Science and Technology); COFAF (Committee on Food, Agriculture and Forestry - including fisheries); ASOEN (ASEAN Senior Officials on Environment; IOC-Subcommission on WESTPAC, i.e. Subcommission of the Western Pacific of the Intergovernmental Oceanographic Commission; ESCAP, i.e. Economic and Social Commission for Asia and the Pacific.

Unfortunately, however, none of those regional bodies are specifically dealing with the South China Sea. While ASEAN is limited to the ASEAN member countries, WESTPAC and ESCAP cover much larger areas of the Asia and Pacific region. Another possibility is of course to establish a new organization specifically dealing with the South China Sea.

Conclusions and Recommendations

The South China Sea is part of the Southeast Asian waters. It is a semi-enclosed sea connected to the Java Sea and the Straits of Malacca and Singapore in the South and the Strait of Taiwan and Bashi Channel in the North. The Monsoons have a strong influence on the climate in the region. In turn, the monsoonal climate also governs the oceanographic features of the South China Sea.

There are a number of international and regional oceanographic expeditions that have been carried out in this region and there are many existing cooperative programmes on marine scientific research and the protection of marine and coastal environment in Southeast Asian waters that could be implemented in the South China Sea.

There are various sources of pollution

that could endanger the marine environment in the South China Sea, such as pollution caused by ships, either by tankers or ballast cleaning, pollution as a result of industrialization in coastal areas as well as the destruction of the marine environment as a result of dumping and the introduction of toxic waste to the marine environment, and environmental changes as a result of global climatic changes. It is therefore essential for the governments around the South China Sea area to be fully aware of the environmental issues in the South China Sea and accordingly to raise the level of the awareness of their own people.

Broadly speaking, environmental problems transcend national boundaries. Regional cooperation, and in some cases even global cooperation, is necessary to protect the marine environment. For this reason, industrial and advanced countries, especially those of the users of the South China Sea, should help the South China Sea states to cooperate in protecting the marine environment of the sea.

It should be realized that the need for development and the need for environmental protection should not necessarily contradict each other. It is possible to achieve development by, at the same time, protecting the environment. The need for "a sustainable development" is therefore becoming greater in the South China Sea area. The South China Sea states should learn from the mistakes of some industrial development in the developed countries that have caused environmental degradation. The South China Sea states should participate actively in international efforts and conferences to protect global and regional environment, and to cooperate among themselves in protecting the marine environment in the South China Sea.

Programmes on marine scientific research and environmental protection should be formulated in accordance with the needs of the participating member states, the availability of expertise and trained manpower, research infra-structures and facilities, and the budget. Some of the priorities could be: (a) *baseline studies* for developing and managing the renewable and non-renewable resources; (b) *oceanographic studies* to monitor the climatic global change in the region; (c) *monitoring marine and coastal pollution* and its impact on the productivity of the South China Sea; (d) *studies on coastal*

ecosystems: mangrove, coral reefs, seagrass, soft bottom, estuaries, deltas; (e) *establishing reserves*, protected areas, and marine parks in South China Sea.

A regional body could be established to coordinate all aspects of cooperation in or regarding the South China Sea. Lastly, the South China Sea states should establish and develop a regional contingency plan to protect the marine environment, particularly from oil pollution and the introduction of other toxic substances in the sea.

Potential Conflicts in the South China Sea: In Search of Cooperation

Hasjim DJALAL

THE South China Sea can be regarded as a "semi enclosed sea" within the meaning of the new regime of the Law of the Sea Convention (LOSC 1982). Article 122 of the LOSC 1982 defines "enclosed or semi enclosed seas" as: (i) a "gulf, basin, or sea surrounded by two or more states and connected to another sea or the ocean by a narrow outlet"; or (ii) "consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal states." Following these definitions South China Sea is definitely one of the enclosed or semi-enclosed seas.

The LOSC 1982 has been signed by all the littoral states of the South China Sea, Brunei Darussalam, Malaysia, Singapore, Thailand, the Philippines, Indonesia, Vietnam, China, and even by the land-locked country in Southeast Asia, namely, Laos. Some of them have ratified the LOSC 1982, namely, Indonesia and the Philippines, while others are expected to follow suit in due time.

According to Article 123 of the LOSC

1982, states bordering the enclosed or semi-enclosed sea, *in casu*, the South China Sea, should "cooperate with each other in the exercise of their rights and in the performance of their duties" under the LOSC 1982. The article further stipulates that the states bordering the enclosed or semi-enclosed sea (hereinafter referred to as the "bordering states") shall endeavour, directly or through an appropriate regional organization:

- a. "to coordinate the management, conservation, exploration and exploitation of the *living resources* of the sea;
- b. to coordinate the implementation of their rights and duties with respect to the protection and preservation of the *marine environment*;
- c. to coordinate their *scientific research* policies and undertake where appropriate joint program of scientific research in the area;
- d. to invite as appropriate other *interested states* or *international organizations* to cooperate with them in furtherance of the provisions of this article."

South China Sea has plenty of *potentials for conflicts* as well as for cooperation. The potentials for conflict are derived from the following facts. *Ideologically*, the sea is bordered by the non-communist ASEAN in the eastern, southern and western rim and by the communist countries in the northern rim. Even among those bordering communist states, conflicts exist between Vietnam and the PRC. In addition, "Taiwan" is also playing a certain role in the South China Sea's ideological, political, economic and strategic equations.

Geographically, the South China Sea is very strategically located between two major oceans, namely, the Indian and the Pacific Oceans, and between the Asian land mass and the insular Southeast Asia. It has a long history of interplay with non-regional powers. Even up to the moment various foreign powers have specific interests in the South China Sea. The interplay between regional interests and those of the non-regional powers also have potentials for conflicts and various alignments and counter alignments. At the same time the geographical location of the South China Sea as well as the role that it could play in preserving the interests of both regional and non-regional powers also open up the possibilities for cooperative arrangements between Southeast Asia and non-Southeast Asian interests.

Politically, the sea is also surrounded by incessant turmoil within the last several decades. While peace, stability and progress may have come to ASEAN, such is not yet the case with Indochina. Even among ASEAN states, conflicts have not been completely solved; in fact, some of them have only been shelved under the rug in the name of ASEAN spirit and solidarity. Equally, the

political conflict in Indochina, particularly on Kampuchea, continues to dominate the situation which has brought about strains in the relationship between ASEAN and Indochina; indeed it has also influenced the relations between Southeast Asia in general and major powers in the world. In addition, some of the Southeast Asian states are members of the non-aligned group (Indonesia, Malaysia, Singapore, Vietnam, Laos and "Kampuchea") while others are closely aligned with the US, and therefore are not members of the non-aligned group, such as the Philippines and Thailand.

Strategically, one could also find various alliances and military bases in the South China Sea region. Some ASEAN states still maintain relatively close alliance with the US, while Vietnam has done practically the same with the Soviet Union. Kampuchea is definitely torn apart by the various alliances among its various factions with non-regional powers. In addition, we still see the continuation of the Five Powers Defense Arrangement (FPDA) between the United Kingdom, Australia and New Zealand with the regional states, namely Malaysia and Singapore, although this arrangement has not been very vocal during the last several years.

Jurisdictionally, the sea contains numerous problems with potentials for conflicts. There are a lot of bilateral territorial disputes, either over ownership of various islands or over boundary delimitations. In addition, there are also a lot of problems regarding the delimitation of territorial seas, contiguous zones, exclusive economic zones and continental shelves. In fact, even national legislations regarding the various zones are not necessarily the same among the bordering states. While some states may have done some work on territorial seas and

continental shelves delimitations, very little work has been done on the delimitation of contiguous zones and exclusive economic zones.

Economically, the South China Sea has enormous potentials either in mineral (non-living) or fisheries (living) resources: (1) the bordering states of the South China Sea have already discovered or are discovering enormous potentials of oil and gas resources. Some of them are being exploited as in the case of Malaysia, Indonesia and Brunei Darussalam. Some are being explored as in the case of the Philippines, Vietnam and Thailand; (2) the potentials in other minerals, including manganese rich nodules or other minerals have not as yet been sufficiently known; (3) equally, the sea has a lot of potentials for the exploitation of living resources although they are generally regarded as multi-species that may not make it attractive enough for large scale commercial exploitation. The fishery resources are nevertheless very important for the livelihood of millions of local fishermen; (4) the stage of economic development of the bordering states also varies considerably. Thailand, for instance, is or has become a very significant distant-water fishing nation (DWFN), in the sense that its fishermen have been looking for fishery resources way beyond its territorial sea or exclusive economic zone (EEZ) in view of the increasingly depleted resources in the zones within its national jurisdiction. Other countries are basically still "normal" coastal states that would like to preserve and exploit the fishery resources for the maximum benefits of their population; (5) there are still other states that are land-locked (Laos) or "geographically disadvantaged" such as Singapore, that have interest in the exploitation of living resources in the jurisdictional zones of other

states; (6) in addition, to all those law of the sea related economic issues, the bordering states have also indicated various stages of economic development, from the "newly industrialized countries" (NICs) like Singapore, which very soon may be followed by Thailand, to the much less developed economy like Kampuchea and Vietnam; (7) in general, one could see the clear contrast between economic development and progress within the last several years in the ASEAN region and lack of such progress in the communist countries of Indochina.

The maritime space of South China Sea is also extensively used for navigation and shipping. The Straits of Malacca and Singapore, the entrance to the South China Sea, are among the busiest straits in the world. The South China Sea itself contains significant sea lanes of communication (SLOC), that connect the Indian Ocean with the Pacific. Substantial trade and shipping, especially tankers to and from Japan, navigate through the South China Sea. The significance of the international shipping, trade and tankers, together with the increasing role played by ASEAN in the promotion of its economic development and trade have also made the South China Sea so important for the economic well-being and political stability of the countries surrounding it.

Environmentally, the sea has also become increasingly vulnerable, not only because of the increasing exploration and exploitation of oil and gas resources, but also because of potential hazards resulting from the increasing use of the sea by ships, especially giant and super tankers. In addition, the process of industrialization in the coastal areas of the South China Sea would also bring problems to the marine environment at a later stage if they are not properly

handled. Global climatic changes as a result of the "green-house effect" due to the increasing emission of carbon dioxide into the air may also affect the environment of the South China Sea area.

Scientifically, a lot may have been done in the sea; yet it is apparent that a lot of scientific research would still be needed regarding the sea in order to assess its resources or phenomena more accurately. In addition, the marine scientific research would also be essential in order to protect the environment of the sea and to understand the various natural phenomena that may affect it.

Socio-culturally, the South China Sea lately has also become a source of refugee problem. Practically no country in Southeast Asia is immune from the problem as a result of political and ideological conflicts in Indochina. While this problem has humanitarian aspects, it has also become a political issue in Southeast Asia. In fact, other non-Southeast Asian countries have been playing a role in this matter especially as receiving countries such as the US, Canada, and the Scandinavian countries. While the problem has indicated potentials for conflict, it has also been solved to a great extent through cooperation among the various parties involved.

While the various factors mentioned above can become sources of conflict in the South China Sea, there has also been a growing feeling that they could and should be made potentials for cooperation. *Ideologically*, while each state would jealously maintain its own system, there has been an increasing awareness that ideological factors should not prevent the development of cooperation between states. Thus we have seen the readiness of ASEAN to develop cooperation with Indochina, some of them before

the achievement of a solution to the Kampuchean conflict. The possibility of developing cooperation between states of different ideological systems in Southeast Asia may now have become more realistic than in the past.

Politically, there has also been an increasing realization among Southeast Asian states that good neighborliness, regional stability and cooperation are important for the stability of each country in the region. This awareness have made it possible for states in Southeast Asia to concentrate on seeking solution to their problems through peaceful means. They are relying more and more in their own efforts rather than seeking alliances with non regional powers, although the latter are still important factors.

Strategically, the Southeast Asian states, while rightly continuing to be cautious with regard to their national security and stability, are increasingly willing to rely on their own collective regional efforts by increasing their regional resilience and cohesiveness, rather than relying on outside powers. In this context the idea of a Zone of Peace, Freedom and Neutrality in Southeast Asia (ZOPFAN) and Nuclear Weapons Free Zone (NWFZ) are increasingly more attractive than alliance with non-regional powers, especially at a time when global reduction of East-West tension is very evident.

Economically, the exploitation of the enormous resources of the South China Sea definitely calls for cooperation rather than confrontation. In fact, the bordering states must have recognized this when they signed the LOSC 1982. There are a lot of things that could be done in coordinating, managing, conserving, exploring and exploiting the living resources of the sea. Equally there are a lot of coordination and cooperation that could be developed among the bordering

states regarding the protection and preservation of the *marine environment* as well as on the conduct of scientific research in the area.

As regards shipping and navigation issues, the South China Sea provides potentials for cooperation, not only among its littoral states but also between them and the major maritime countries. The experiences of Indonesia, Malaysia, Singapore and Japan in cooperating to promote safety of navigation in the Straits of Malacca and Singapore are very relevant in this regard. The four countries have successfully cooperated to promote the safety of navigation in the Straits and therefore also the protection of the marine environment, by conducting extensive hydrographic surveys, producing new and more accurate maps, installing new and the necessary navigational aids, establishing traffic separation scheme, determining "underwater keel clearance" (UKC) establishing a "revolving fund" to take care of immediate costs of cleaning pollution caused by shipping accidents, etc. The increasing attention being given by the Southeast Asian states to economic development and trade would necessitate increasing cooperation to promote safety of navigation in the sea. In this context, cooperation in fighting piracy, drug-trafficking and even search and rescue would be very important. This cooperation is more crucial in view of the increasing use of the sea by major powers, particularly Japan, the US, the Soviet Union and China, either for transit purposes or for defense and strategic requirements. The increasing use of the sea for navigation should be further coordinated with increasing exploration and exploitation of the maritime resources. And this can only be done if proper cooperation is developed between the interested states.

Perhaps one of the most important

sources for potential conflict that could be developed into potential source of cooperation is in the area of *territorial and jurisdictional disputes*. While realizing that the political differences may help to complicate the problems of delimitation, in fact they should not be necessarily so. Territorial and jurisdictional disputes may exist between two good neighbors and best friends; they still would have to be solved regardless of the different political and social systems between states or irrespective of the state of political relations between neighboring states. It is expected, however, that once territorial and jurisdictional conflicts have been solved the states concerned may concentrate more efforts on building better relations that will further contribute to economic and social progress of them all.

In view of the above it is high time for bordering states in the South China Sea to pay increasing attention to the sea. If the South China Sea in the past has been separating the nations along its rim, it is time now to consider the sea as a *bridge* between and among all its littoral states, and thus developing a *sense of community* among all the states bordering the sea. The bordering states should make it their policy to avoid conflicts in or regarding the sea and to change them into potential area for cooperation instead.

There are at least six areas in which issues of potential conflicts could be averted and potential cooperation could be developed, namely: (1) political and security issues; (2) territorial and jurisdictional claims; (3) resources management, both living and non-living; (4) navigation, shipping, communication and the related issues of safety and security of passage; (5) environmental, eco-

logical and scientific research; and (6) institutional mechanism to handle the intended development of cooperation. It is high time for countries bordering on the South China Sea to take an active interest in developing a policy of peace and cooperation in or regarding the South China Sea. One of the first steps in this direction would be for each of them to agree that they will solve all the problems related to the above issues by

peaceful means and negotiation. Considering the recent developments in the world, particularly the increasing rapprochement in East-West relations and the general reduction in world tension as well as the increasing emphasis being given to economic development and cooperation, there are reasons to believe that the objective to develop cooperation in the various areas mentioned above could now be realistically achieved.

Jurisdiction Issues and the Conflicting Claims in the Spratlys

B.A. HAMZAH

Introduction

CONFLICTING claims in the South China Sea, specifically in the Spratlys, emanate from competing jurisdictions. Most of the unresolved territorial problems originate from disagreement over the modes of acquiring the territories and the differing approaches to delimitation of the boundaries. International law has prescribed various modes for territorial acquisition e.g. cession, occupation, prescription, discovery and accretion. In the past international law also sanctioned title through conquest. Both concepts of conquest and cession by force are no longer valid under the current principles of international law.

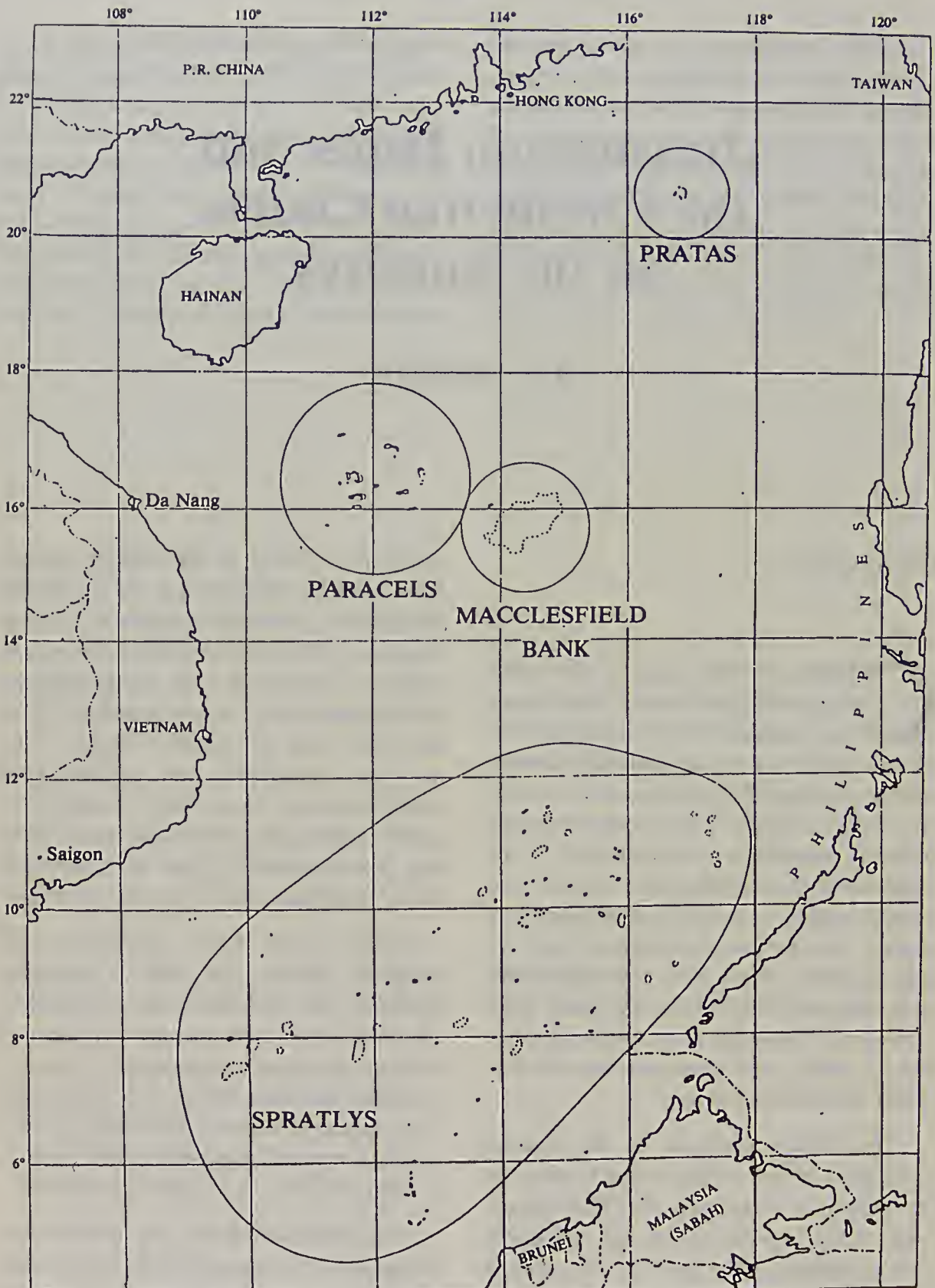
The current problems in the Spratlys have been further compounded by new developments in ocean laws. The 1982 Convention on the Law of the Sea has introduced new concepts in ocean laws e.g. the exclusive economic zones, the archipelagic state doctrine, the common heritage of mankind and

many more. Some of the existing concepts have also been redefined e.g. the continental shelf and the precise delimitation of the territorial sea. While these are useful concepts on paper, in practice it calls for adjustments and harmonisation of laws which as a process takes time to complete. Besides, there are new obligations and responsibilities which could only be enforced through maximum cooperation between all states. Without this cooperation from all a stable regional maritime order is not likely to evolve.

Many of the present problems in the Spratlys precede the 1982 Convention. However, the convention has compounded the problems as states become more assertive through unilateral enforcement of some of the rights prescribed by the new convention. Overlapping jurisdiction in the exclusive economic zones and continental shelf is an inevitable outcome of the new ocean regime.

The 1982 Convention has some serious limitations. For example, it does not address the delimitation of the exclusive economic zones and the continental shelf in a conclu-

Chart 1



The Disputed South China Sea Archipelagos. -- Mercator Projection -- Equatorial Scale 1:5 800 000

sive way. The arguments have always revolved around the applicability of median and equidistance lines as well as equitable principle or equity for the delimitation of both the continental shelf and the exclusive economic zone.

The 1982 Convention allows for multiple boundaries for the continental shelf and the EEZ although a single unitary line would be preferred. Besides, although the rights and responsibilities over the two regimes are necessarily different, these are not necessarily reconcilable. For example, the coastal states have sovereign right over non-living natural resources of the seabed and sub-soil under both the EEZ regime and the continental shelf regime. Consequently, if the boundary of the EEZ does not coincide (i.e. multiple lines) with that of the continental shelf, a conflict of jurisdiction over the natural resources may occur. Conflicting jurisdictions tend to produce conflicting problems.

One other problem confounding the issues in the Spratlys is the desire of the coastal states to accord full regimes to the small distant islands at sea. This is a very delicate issue as it is now too late to retract what has been agreed upon. Because a state sees the potential gain in creeping annexation it mobilises all energies to occupy small islands away from its shores and in the process of which creates various forms of jurisdictional problems.

Complicating the problem in the Spratlys is the attitude of some states which tend to resort to force as a policy instrument in settling their differences. China has used force twice (discounting small skirmishes) in the last two decades. On both occasions the victim has been Vietnam. The most recent

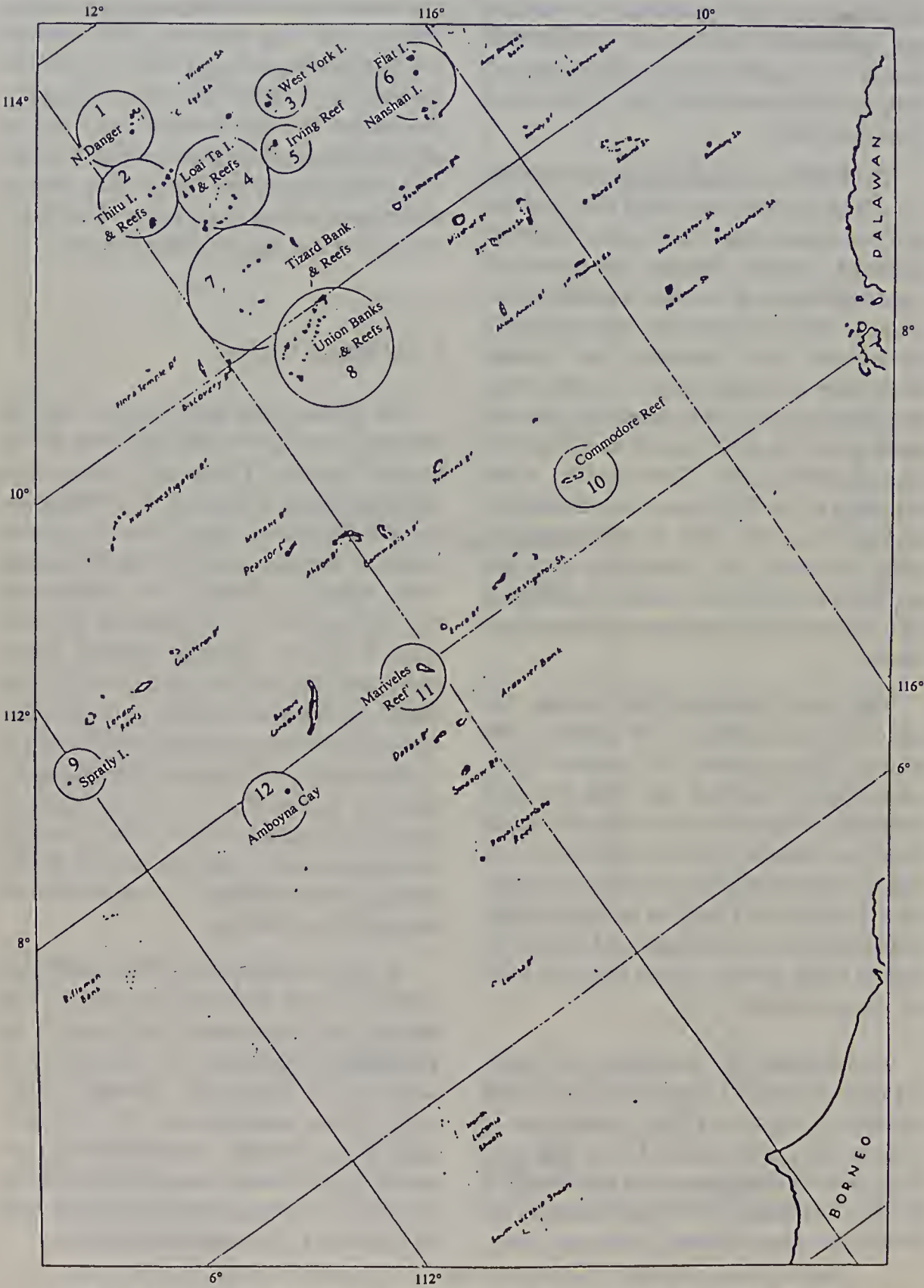
incident took place on March 14, 1988. In that incident the Vietnamese lost two vessels, 87 lives and some territories. The incident has been elaborated elsewhere. It will be superfluous to retrace the event here again. The March 14 incident marks the volatility of the problems in the South China Sea. The situation is so volatile that it only needs a small spark to start an explosion. The March 14 incident can happen again anytime.

Conflicting Claims

Six nations have laid claims to the numerous islets in the Spratlys area of the South China Sea. China and Taiwan claim the entire South China Sea. The Philippines has occupied some eight islets in an area which a Filipino explorer has christened "The Kalayaan Group." The Vietnamese have a long history of claim to the same area. Presently, Vietnam occupies twenty islets, according to one source. In 1979 Malaysia claimed certain islets in the Spratlies, some of which overlap with those claimed by Vietnam and the Philippines. The Malaysian claim to Louisa Reef is also contested by Brunei Darussalam. There is also overlapping jurisdictional problems between Brunei Darussalam and Malaysia as well as between Indonesia and Vietnam.

A cursory examination of the conflicting claims in the Spratlys are useful. The absence of a single agreed definition of the geographical dimension of the Spratly islands or the constituent members of the group seems problematical. For this purpose, Dieter Heizeig's classification is quite useful. Dieter Heizeig has defined the Spratlies as the area bounded by 4 degrees 13N latitude and 117 degrees 50E longitude.

Chart 2



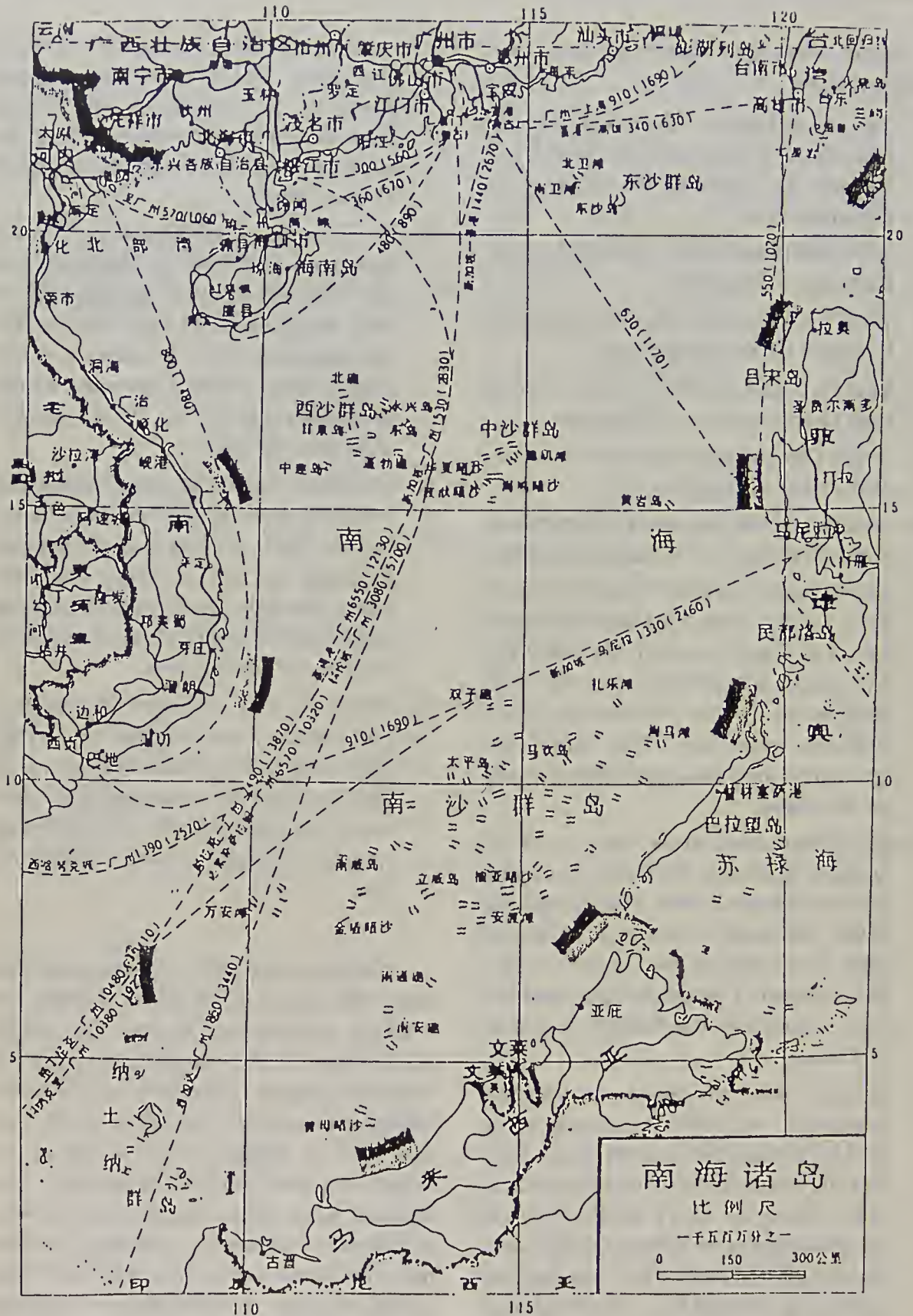
The Spratly Islands. Chart based on British Admiralty chart No. 2660B. The numbered circles refer to the positions of the islands and cays specified in my article.

Dieter Heinzig divides the area into twelve regions:

1. The North Danger Cay comprising the Northeast Cay and the South West Cay. Vietnam has occupied the South West Cay since 1974.
2. Thitu Island and Reefs. Occupied by the Philippines since 1971.
3. West York Island (Likas in Tagalog). Occupied by the Philippines.
4. Loai Ta Island and Reefs (Kota in Tagalog). Occupied by the Philippines.
5. Irving Cay (Balagta in Tagalog). Occupied by the Philippines.
6. Nanshan Island. Occupied by the Philippines. Referred to in Tagalog as Lawak.
7. Tizard Bank and Reefs north of Union Bank Group, Nam Yit Island and Sand Cay. The biggest island in the area is Itu Aba, about 89 square acres. It has been occupied by Taiwan intermittently since 1956 (one source says 1949). Taiwan has reportedly deployed some 600 marines on the island.
8. Union Bank and Reefs. One of the islands in the Group, Sin Cowe, was occupied by Vietnam from 1975 to March 1988. The naval incident of 14 March 1988 took place in the vicinity of Sin Cowe. Gaven, Caman and Sin Cowe are now occupied by the People's Republic of China.
9. Spratly Island (Truang-sa in Vietnam language). The island is presently occupied by Vietnam. About 750 metres long and 400 metres wide. Covered with short green vegetation with a landing strip on it; considered to be Vietnam's most strategic outpost in the South China Sea and it acts as a forward base for Vietnamese activities on Amboyna Cay and many other islands in the area. Cuarteron Reef and Fiery Cross (West Investigator Reef), the two prominent reefs off the main Spratly Island were separately occupied by the PRC troops on 18 and 20 January 1988.
10. Commodore Reef (Terumbu Laksmanna) claimed both by Malaysia and the Philippines. Also claimed by the PRC and Taiwan. In May 1988 the Royal Malaysian Navy arrested three Filipino fishing vessels (Jasmine, Ranger 16 and Ranger 17) off Permatang Ubi (Ardasier Bank).
11. Mariveles Reef (Terumbu Mantanani) Presently occupied by Malaysia. Claimed by the PRC, Taiwan and Philippines. Malaysia has also occupied two other reefs: Swallow Reef (Layang-layang) and Terumbu Ubi (Ardasier Reef), both lying South of Mariveles.
12. Amboyna Cay. Claimed by Malaysia and Vietnam. Also claimed by the PRC and Taiwan. The Vietnamese have since 1979 re-occupied Amboyna Cay. It is now the most heavily fortified Vietnamese forward outpost in the Spratlies.

Claims by the PRC, Taiwan, and Vietnam: The claims by the PRC, Taiwan and Vietnam are discussed together for reasons of convenience. It is important to put the conflicting claims to the Spratlys in a proper historical perspective. Both China and Vietnam have at various points in history asserted rights over parts of the Spratlys. Each claimant have merely repeated the previous assertions of ownership whenever conflicts over the island group arise and both have placed emphasis on discovery as a basis for title. Great Britain, France and Japan too

Chart 3



The Boundaries in the South China sea as Drawn by Peking. Source: Chung-hua jen-min kung-ho-kuo ti-t'u, Peking 1965, 3rd Edn. 1972 (detail). Scale: 1:15 000 000.

Chart 4



The Boundaries in the South China Sea as Drawn by Taipei. Chart based on Chung-hua min-kuo ti-t'ü chi, ti szu ts'c, Chung-kuo nan-pu, 2nd Edn., Taipei 1964 (scaled down).

have at various points in history asserted control over some islets in the Spratlys. Great Britain for example acquired Labuan from Brunei in 1846 and in 1889 extended its jurisdiction to include the island of Spratly and Amboyna Cay (now occupied by Vietnam).

During the Second World War the Spratly Islands came under the jurisdiction of the Japanese Imperial Forces. In 1939 Japan occupied Hainan, the Paracels, and the Spratly Islands. All these islands were placed under the jurisdiction of Taiwan, then a territory of the Japanese Empire. In August 1945, the Japanese surrendered to the Allied Powers and the Japanese forces withdrew from the Paracels and the Spratly Islands. Following the Japanese withdrawal from the area Taiwan took possession of the islands.

In May 1950, the PRC forces re-occupied Hainan Island. Taiwan simultaneously withdrew its forces from Hainan, the Paracels and the Spratlys. In September 1951, a peace treaty was signed between Japan and the Allied Powers in San Francisco in which Japan as the vanquished party renounced all rights, title, and claim to the Spratlies and the Paracels. Vietnam attended the San Francisco Peace Conference and reasserted ownership of the Spratlies and the Paracels. However, neither the PRC nor Taiwan was invited to participate in the peace conference and both were excluded from the spoils of war. Chou Enlai, then PRC Foreign Minister, made a statement in August 1951, just before the Peace Conference took place in San Francisco, that the "Spratlies and the Paracels" belonged to China. The Taiwan Government went even further by entering into a bilateral treaty with Japan on 28 August 1952 whereby the latter renounced all rights, title and claim to Taiwan (Formo-

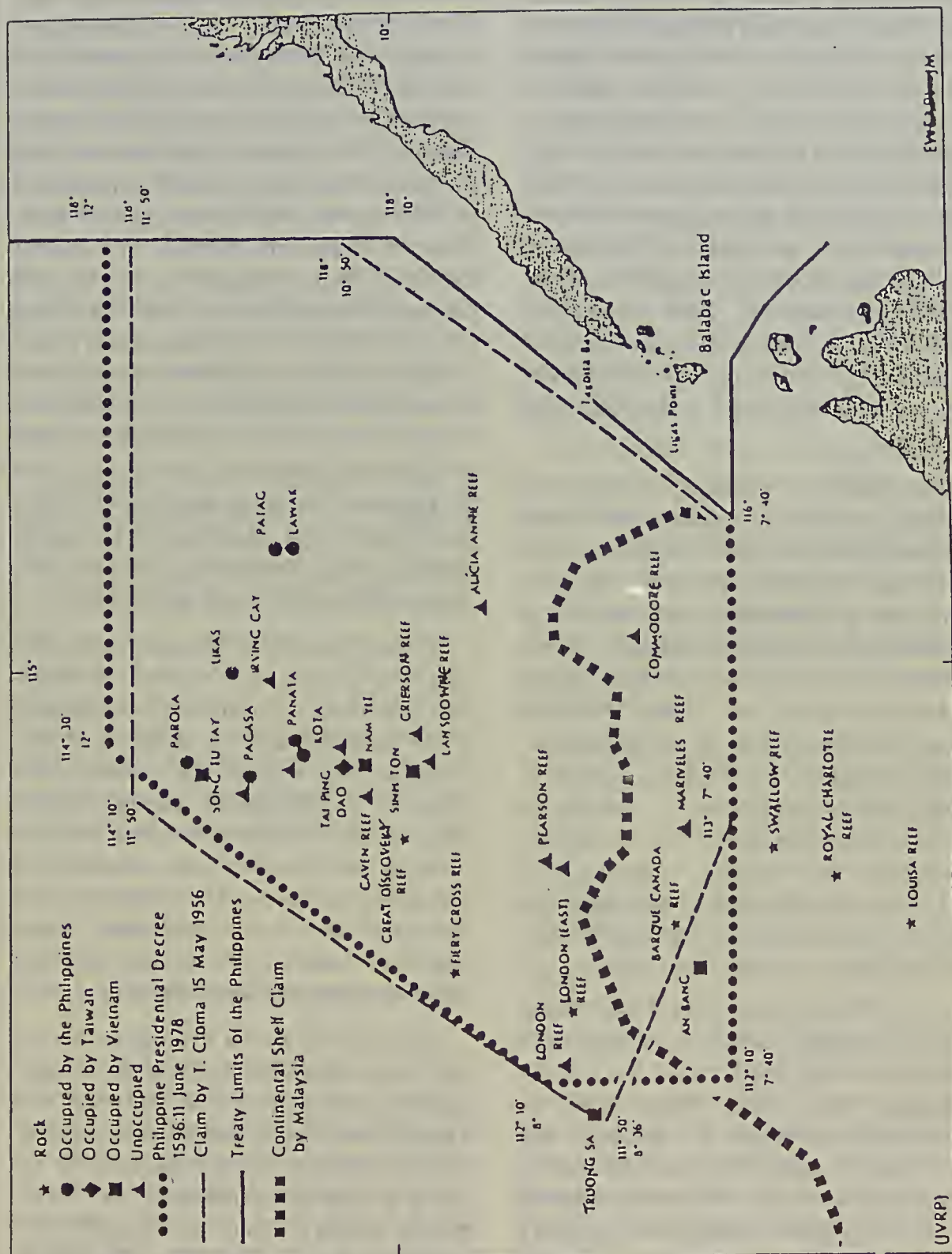
sa), the Pescadores, the Spratly Islands and the Paracels.

The South Vietnamese troops occupied the Paracels for some time before it was seized by the PRC troops following a brief clash in January 1974. The Paracels have since 1974 remained in Chinese hands and are likely to be so in the near future. Vietnam continues to protest against Chinese occupation of the Paracels which it claims as "historically ours." Before 1974, all islands in the Spratlies (including the Paracels) were claimed (and some were occupied) by South Vietnam by virtue of its succession to the rights held by France.

Victor Prescott is of the opinion that Vietnam has tacitly acknowledged that both archipelagoes (Paracels and Spratlies) belonged to China through various admissions and actions in 1956, 1958, 1960, 1965, 1969, 1972 and 1974. The Chinese have produced Vietnamese documents in September 1958 and May 1965 to support their claim. The Spratlies were placed under China's jurisdiction on the Russian maps published in 1972 and 1975.

Following the naval clash of 14 March 1988, the Chinese alleged that Vietnam had occupied twenty islands, reefs and cays in the Spratlies. According to Professor Park Choon-Ho of Korea University, South Vietnam in 1973 incorporated eleven islets into its territory. It is possible that Vietnam has occupied nine other islets since 1973. Prescott has identified only five (Spratly Island, Southwest Cay, Sin Cowe, Namyit and Amboyna Cay). Another source puts it at ten.

It has been pointed out in passing that Taiwan withdrew from the Paracels and the Spratlies in May 1950 following the establishment of the Communist regime in Bei-



The Spratly Islands. (from Victor Prescott)

jing. However, in 1956 Taiwan sent troops to *re-occupy* Itu Aba (Taiping Dao) which has been fortified into a strong naval facility since. South Vietnam, however, issued a communique on June 1, 1956 reaffirming its ownership of the Paracels and Spratlies with specific reference to the San Francisco Statement of 1951. It has been suggested that even if France validly occupied the Spratlies in 1933 it relinquished its sovereignty over them in 1941 to the Japanese. South Vietnam (or North Vietnam) could only succeed to those rights held by the French. Vietnam did not have any right to succeed to the rights held by Japan.

The validity of Vietnam's claim to the Spratlies must be judged against its own actions and admissions. On 14 September 1958 Mr. Pham Van Dong, Vietnam's late Premier, sent a diplomatic note to Beijing acknowledging China's declaration of the 12-mile territorial waters around the islands in the South China Sea. China interpreted Pham Van Dong's note as affirming Vietnam's recognition that the Spratly group of islands belonged to China. To reinforce its position China has also cited the various books and maps published in Vietnam since 1956 which not only used Chinese names to refer to the islands in the Spratlies but also marked them as territories of China.

The Filipino Case: In 1956 Tomas Cloma, a Filipino national, claimed some territories in the South China Sea for the Philippine Government. Cloma based his claim on the principles of "discovery and proximity." It should be pointed out that the original claim was not immediately endorsed by the Philippine Government. Cloma's claim of the area which he christened Freedomland (or Kalayaan in Tagalog) was quite extensive, including among the thirty

three islets, the islands of Spratly and Amboyna Cay (Pulau Kecil Amboyna). Although the Philippine Government was reluctant to endorse Cloma's claim, between 1970 and 1971, the Philippines had evidently occupied three islands in the Spratlies. The Philippines had also occupied a fourth island in the Spratlies prior to the spring of 1974. However, it was only on June 11, 1978 that President Marcos signed a Presidential Decree (1956) claiming the Kalayaan Group for the Philippines. The area claimed by the Philippines is almost identical to that claimed by Cloma except that it *excluded* the Spratly Islands (now occupied by Vietnam) and *included* Amboyna Cay (also occupied by Vietnam). The claim made by the Philippines extends over an area of 70,150 square nautical miles. Manila has deployed more than 1,000 marines on all eight islands.

Whilst Cloma cited 'discovery and proximity' as the basis for his claim, the Philippine Government justified its incorporation of the Kalayaan area on security and economic grounds vital for the survival of the Republic. The Philippines asserted that the area was *terra nullius* at the time of its occupation and that they had occupied only abandoned territories. The Philippines also maintained that it had established "sovereignty by history, indispensable need and effective occupation and control."

The assertion by the Philippines that the area was *terra nullius* is certainly not persuasive as others (Vietnam, the PRC and Taiwan) have already laid claim to the area. Neither proximity nor national security is a strong ground in international law for acquiring territory. There are essentially two problems relating to the Philippine claim to the Kalayaan. Firstly, the existence of prior claims; at least three of them preceded the

claim of the Philippines. Secondly, by claiming the entire area as territorial seas the Philippines is claiming territorial sea ranging as wide as 78 to 146 nautical miles contravening the 1982 Law of the Sea Convention which the Philippines has ratified. The Philippines presently occupies eight islands in the Spratly; Loaita (Kota) was occupied in 1968, Thitu (Pagasa) and Northeast Cay (Parola), and subsequently it occupied and fortified West York Island (Likas), Fat Island (Patag), Nanshan (Lawak) and Lankiam Cay on Loaita Bank (Panata). Terumbu Laksamana (Commodore Reef) has also been occupied by the Philippine forces.

Malaysia's Claim: Malaysia's claim to some islets in the Spratlies in 1979 seems to be the most recent. Malaysia's claim is concurrent with its 1979 map of the continental shelf. Two of the islands claimed by Malaysia are presently occupied by other countries: Pulau Amboyna Kechil by Vietnam and Terumbu Laksamana by the Philippines. Brunei has not yet produced a new maritime map although its fishery zone limit seems to indicate roughly its EEZ area. Brunei has also protested against the 1979 map of Malaysia.

The International Law Perspective

It is useful to examine the conflicting claims to the Spratly Islands from the international law perspective. The purpose is threefold: to show linkages between law and conflicting claims and to establish the legality of the claims as well as the extent to which international law can be used to explain the problems relating to conflicting territorial claims. Within the discipline of international

law there is a very well established body of rules and state practices which deal with territorial acquisitions. Often, problems of conflicting claims do not result from the lack of understanding of international law but rather from the politics surrounding the claims. Conceptually, in international law the earth's surface can be viewed as consisting of three types of territory: that which rightly belongs to some state, that which belongs to no state (*terra nullius*) and that which belongs to all states (*terra communis*). Strictly speaking only *terra nullius* territory can be nationally appropriated.

International law is also concerned with delimiting respective territorial boundaries and with regulating the transfer of territory from one state to another as well as the actual status of a particular piece of territory. In this context, international law can also be used to determine boundaries and as a doctrine it is most applicable in resolving conflicting claims.

Many of the conflicting territorial claims in the world have their origins in creeping annexation or the acquisition of additional territories through unilateral means. New territories are acquired for at least two reasons: resources and strategic considerations. Under the 1982 Law of the Sea Convention, an island (which is defined as above water at high tide) can provide a state, among others, a regime of 200 nautical miles of the EEZ. So a small speck of island in the middle of the ocean becomes very important as it can expand a state's maritime territory. This explains only partially why states are keen to claim distant islands. But such unilateral attempts at creeping annexation can also lead to territorial conflicts between states as they compete for new territories. The problems in the South China Sea are due

partly to the creeping annexations and partly to the uncertainty surrounding the title of the islands. Whose islands are these? What was their status at the time the claims were made? These are some of the questions to which international lawyers have searched their brains for an answer. International law recognises five principal modes of territorial acquisition: occupation, prescription, accretion, cession and conquest. These modes are still useful to explain the validity of conflicting territorial claims since many of today's territorial disputes center around the validity of yesterday's acquisitions. It would be proper to examine these modes very briefly.

Occupation is a means of acquiring unappropriated territory. To constitute a valid claim, occupation must satisfy at least two minimum conditions. The territory to be occupied must not belong to anybody and has in essence to be *terra nullius* at the time of acquisition. Otherwise, the occupation is not valid. Secondly, the occupation must be effective to the extent that there exists an actual, continuous and peaceful display of state authority over the occupied territory. Mere discovery not immediately followed by effective occupation gives the discoverer only temporary title (i.e. inchoate title). Unless the occupation is followed by effective jurisdiction within a reasonable time it is subject to appropriation by another state. There are, however, exceptions to the rule.

Prescription to be valid must be based on effective occupation but differs from occupation only with regard to the status of the territory at the time of occupation. It applies to territory that is lawfully claimed by another state. Title through prescription is effective only through a sufficient period of uninterrupted occupation (i.e. through the operation of time) and by acquiescence of the

other claiming party. Acquiescence is implied when one party fails to manifest its opposition of a title in a sufficiently effective and positive manner, for example, by reference to an international tribunal or taking such actions to announce publicly its protests or opposition of the title. A state acquires territory by accretion when a new territory is formed through the operation of nature within its existing territorial limits. For example, when the sea recedes or a river changes its course or dries up leaving a new piece of territory within the territorial limit of a state. The emergence of an island in the territorial sea of the EEZ of a state is another example of accretion.

Cession, on the other hand, refers to the transfer of territory from one state to another often by treaty or agreement. Cession can be both voluntary or forced. The cession of Singapore in 1819 was voluntary. So was the cession through a sale agreement of Alaska to the United States in 1867. The cession of Alsace-Lorraine to Germany in 1871 by France was forced. Conquest is similar to forced cession in that it involves the forcible seizure of another state's territory. It should be recognised that the current principles of international law pertaining to the permissible use of force, particularly those adopted by the United Nations Charter, have made some writers and jurists to conclude the invalidity of such title.

Many states have erroneously maintained that islands close to their shores belong to them by virtue of their geographical proximity. It is impossible to show the existence of a rule of positive international law that islands situated outside the territorial waters should belong to a state because of the mere fact of proximity or contiguity. Other evidence must exist to support title to

a territory in such a situation. Proximity, like discovery, on its own merit cannot create title in international law. China and Taiwan by virtue of their area claim have contested all other claims. Of late, China has been most active in the South China Sea.

Reasons for the Scrambles

Why the scrambles? Partly for economic reasons. The South China Sea is believed to be rich in oil, gas and fish. All the states with conflicting claims in the area have started exploring for hydro-carbon resources in the disputed areas. Fishery resources have also featured prominently in the area leading to some “nasty” incidents recently. The arrest in April 1988 of three Filipino vessels off Permatang Ubi (Ardasier Bank), an area which Malaysia has claimed well within its exclusive economic zone demonstrates the extent to which states are prepared to enforce jurisdiction and the likely consequences arising from competition for scarce resources. Geopolitical consideration is another reason for the scrambles. It is true of China which intends to convert the entire South China Sea area into an internal lake, the consequences of which are far-reaching for the entire region.

The March 14, 1988 incident does not seem to portend well for the South China Sea. It may well be that a new seed of discord has already been sown. It may also be the beginning of a new flash point well beyond the current Sino-Vietnam state of affairs. The incident has certainly raised more questions than answers. As to the question who started the clash has now become very academic. Such a question is no longer im-

portant following the use of force by China: at least twice since it seized the Paracels in January 1974. A question that begs response remains: will China use force again and against whom? The more strategic question, however, is: will China *continue* to resort to arms as *an instrument of national policy* in pursuit of what others have long feared, a hegemonic scheme in the South China Sea?

Such jurisdictional problems are not peculiar to the Spratlies. Neither are the conflicting claims and problems of continental shelf delimitation confined only to the South China Sea region. And nor are these problems likely to quickly disappear from the regional scene. While on one hand the littoral states have to learn to live with the problems, there is always the fear of explosions which could engulf the region into endless conflicts.

The issue at hand is as complex as Judge Jessup pointed out in the dissenting opinion on the North Sea Continental Shelf cases. In the dissenting opinion Judge Jessup made references to the fact that real issue in boundary delimitation seems to be “resource sharing or resource distribution” rather than the delimitation per se. In reality, it is politics which governs conflicting claims. A state mobilise the best brains to substantiate a legal position on a conflicting claim but if it lacks political will and political support the problem will not be resolved.

**Confidence-Building-Measures:
Some Suggestions**

The importance of the South China Sea of which the Spratly Islands form an integral part, as a potential resource base especially for petroleum, gas and fish apart from the

geo-strategic considerations makes it a fertile potential source of military conflicts (and other forms of non-military disputes) between states with conflicting interests. The assumption is clear. Conflict occurs when the parties adopt different and incompatible views over solutions to the problems at hand.

What can be done to defuse tensions in the Spratlies? More pointedly, what policy options should be pursued to prevent the present-low level *non-military disputes* from escalating into a *military conflict*? In a way, there is an implicit assumption that the present level of disputes (i.e. non-military) is still manageable. Nonetheless, the present situation is quite precarious. The crisis may be manipulated or exploited for unilateral advantages that could lead to a military conflict if practical solutions to the problems are not found. The challenge to the policy planners is to examine specific policy options to prevent the present dispute from escalating into an armed conflict. In this respect it would be more beneficial to focus on conflict prevention with conflict resolution in mind.

The problems in the South China Sea obviously have a maritime dimension. Thus of pressing concern to the policy makers is both to suggest practical policy options for nations with conflicting or incompatible interests *to maintain a maritime order* based on a system of *accepted rules and practices at sea* that fairly accommodates the different interests at stake and at the same time *to seek solutions to their different interests by peaceful means*. If we accept the thesis which places premium on crisis prevention and non-use of force as a mode for conflict resolution then it would be necessary to pursue Confidence Building-Measures (CBMs). The

core concern of the CBMs would be to avoid or minimise the risk of *an armed conflict* when it is alleged that the accepted rules and practices at sea are being violated. The question is what rules can be made applicable? As a starting point, the 1982 Law of the Sea Convention could be applied since all countries in Southeast Asia have signed the Convention. Indonesia and the Philippines have even ratified the treaty.

Confidence-building-measures are difficult to realize. But the attempt not to do anything for fear that it may compromise vested interests is also counter-productive to the stability of inter-state relations. In this respect, I believe there is already sufficient goodwill for us to build on within the region for CBMs and policy options that could enhance mutual security. Within ASEAN there exists an established structure of state relations tempering rivalry with restraint, power with moderation, building on the existing bonds which have traditionally linked us. What we need to do is to reach out to the others -- the non-ASEAN countries -- to forge new ties and new consensus with regard to dispute management mechanisms as the process of confidence-building-measures evolves.

Toward Transparency: Unresolved within the region is suspicion and fear of each other's intention. Removing this suspicion and fear in the South China Sea could be pursued with much more positive outcome if the situation can be made much more transparent. Of immediacy, there is a need to create greater *transparency in military activities* as a condition for the process of confidence-building-measures to evolve through mutual restraint and mutual respect.

The following are some measures that could lead to greater transparency in *mili-*

tary activities in the South China Sea: (1) Unilateral restraint and refrain from using force as a policy instrument in the disputed area; (2) Recognition of the national sensitivity surrounding the present military deployment in the South China Sea. Recognition of military deployment should not prejudice or diminish territorial claim or sovereignty. Nor should it be used as a basis to deny territorial claim; (3) To stop further annexation of territories in the disputed area. No more creeping annexation; (4) States must restrain from introducing any new military activities within the disputed area; (5) Measures such as notification of military exercises close to the disputed area which could result in unnecessary suspicions should be introduced to ensure greater openness and predictability of military activities. Such arrangements should include exchanging information on military activities in the conflicting area. At the present moment such measures are not in place yet; (6) Coordination and harmonisation of a common set of operating procedures for the Navy and the Air Force within the zone of dispute could minimize the potential for a military conflict arising, for instance, from accidents at sea. A common set of operating procedures could also ensure greater predictability and stability at sea; (7) Measures designed to improve contacts and communications between the conflicting states especially in the military fields to enhance access for military staffs and media representatives, and to increase mutual understanding of localised military capabilities, behaviour and force structures should be encouraged. Modalities for an organized exchange of views on military doctrine tied to actual force structures capabilities and dispositions within the region that could be thought of as the process for confidence-building-measures make greater

progress; (8) Non introduction of nuclear elements, e.g. nuclear ships, in the area except sanctioned by international law.

The above suggestions can only operate in an atmosphere or environment where states with conflicting interests in the South China Sea could accept the obligation to resolve their differences by peaceful means and by refraining from resorting to force as a policy option. Admittedly, for some states which believe power grows from the barrel of a gun, this is difficult to pursue in practice. The proposed package of confidence-building-measures can only be effective once the role of force in inter-state relations is adequately addressed.

While confidence-building-measures can be unilaterally instituted they can be effectively put in place only with mutual agreement of the parties concerned. The limitations for unilateral constraints are pretty obvious. A package of confidence-building-measures can only evolve through a series of consultations, talks, negotiations and other forms of contacts between the interested parties. Such a process is time consuming. For example, the present regime of confidence-building-measures in Europe (manifested on paper in the form of the Final Act of the Conference on Security and Cooperation in Europe) has been instrumental in facilitating the current spate of peaceful political reforms. But the entire CMBs process took more than a decade of negotiations and talks to evolve. Perhaps the countries astride the South China Sea could also take a leaf from the positive experience in Europe by calling a regional conference on confidence-building-measures in the South China Sea. I believe the conditions are now ripe for such a conference to take place.

Functional Cooperation: The South China Sea is not devoid of opportunities and prospects for active cooperation between conflicting states. For example, Malaysia and Thailand entered into an agreement in 1979 (reaffirmed in 1989) to undertake a joint development program in a disputed area in the South Western part of the South China Sea for a period of fifty years. Similar joint development regimes have been practised elsewhere with varying success: between Kuwait and Saudi Arabia over a Neutral Area, the 1974 Agreement between Republic of Korea and Japan on the establishment of a joint development zone on the Continental Shelf also for a period of fifty years. More recently the 1989 Agreement between Indonesia and Australia over the Timor Gap could throw more light on how states circumvent overlapping territorial conflict for cooperation in the economic field.

Whether it is the Timor Gap or the Thai-Malaysia Joint Development Authority Concept which had preceded the former by a decade, the *modus operandi* is the same. The parties concerned recognize the need to *defer* settlement of the territorial dispute in a disputed area by consenting to a cooperative jurisdictional regime to jointly develop the resources in the area. The delicate question of sovereignty is addressed only indirectly. All known joint development agreements have set aside the question of sovereign rights over all or any portion of the joint development zone without prejudice to the positions of the parties concerned. Moreover, the development regime is not intended to erode sovereignty. On the contrary sovereignty is deemed to be further enhanced by the agreement. Jurisdictional issues have a tendency at times to be prohibitive (as in the case of Thai-Malaysia experience) but they are usually resolved by consultations.

Perhaps some of other disputed areas in the South China Sea could adopt this principle. The entire or more realistically, a small portion of the overlapping jurisdictional area between Malaysia and the Philippines, for example, can be a candidate for a Joint Development Authority (JDA) -- type model as an interim measure. Alternatively, in lieu of a full JDA -- type of arrangement an interim measure on fishing could be a useful beginning. The model may not be applicable between Indonesia and Vietnam as the nature of the problem is slightly different. Moreover, both parties are already finalising talks to clarify the problems of delimitation between Indonesia and Vietnam North of Natuna Island. The boundary between Malaysia and Vietnam could partly be resolved by drawing a median line between Pulau Amboyna Kecil and the nearest Malaysian Island opposite it as an interim measure.

Cooperation in specific non-mineral resource areas could also be initiated at the regional level. They include safe navigation, marine scientific research, search and rescue, joint action against trafficking of illicit drug, fishing, protection of the marine environment, conservation, utilization and protection of the living resources, anti-piracy and in other related areas. There is evidently sufficient political will within the region to enter into concurrent jurisdictional regimes e.g. resource sharing or other forms of joint development arrangements especially between the ASEAN countries (e.g. Malaysia-Philippines) and between ASEAN and Vietnam (e.g. Indonesia-Vietnam, Malaysia-Vietnam and Philippines-Vietnam).

When conflict resolution is seen as a process along a continuum requiring decisions at specific points, then appropriate confidence-building-measures may be introduced.

As a practical matter states should cautiously work towards a concurrent jurisdiction -- type of arrangement (e.g. resource sharing or joint development project) gradually and in stages when faced with boundary problems at sea. Douglas Johnson, a noted authority in Law of the Sea, has suggested eight steps for confidence-building-measures at sea that may finally lead to a full concurrent jurisdictional regime. They are: First, agreement to disagree over the boundary area. The intention is to register the existence of the problem publicly and that each side is entitled to a degree of sensitivity in the area. Second, an agreement to define the area of the conflict -- a step higher than the first one -- as possibly the basis for future negotiations. Third, moving further up the continuum -- an agreement on a limited degree of cooperation or consultation in the defined area of dispute. Fourth, an agreement on access through the defined area e.g. access rights to US and Canadian nationals in the disputed Gulf of Maine area. Fifth, an agreement on joint activities e.g. prospecting for minerals. Sixth, an agreement on a joint venture for production purposes. Seven, an agreement on a full scale joint management system for the area in dispute or its adjacent waters without assigning in detail the responsibilities of the parties concerned. Finally, the confidence-building-measures should embark on a full scale joint management system (i.e. concurrent jurisdiction) for the disputed area and its adjacent waters by assigning responsibilities to the agencies of the neighbouring countries for specific administrative functions.

The biggest headache is how to satisfy China and Taiwan which claim the entire South China Sea. Since Taiwan has already been reduced to a provincial economy of China, it will not be able to assert its

jurisdictional right beyond Itu Aba, an island which it has occupied since 1956.

There is no question of excluding China from the proposed conference on confidence-building-measures in the South China Sea without some political consequences. Yet the timing of China's participation in the proposed conference is important as China can be the wild card. A step-by-step approach to a maximalist position seems most practical to pursue. It may be useful to settle the maritime disputes between the ASEAN countries on a bilateral basis first and then between Vietnam and other ASEAN countries. The second phase of the process for confidence building in the South China Sea could then involve China with the other countries *preferably* on a multilateral basis. While fully convinced that a conference on confidence-building-measures in the South China Sea is essential for a stable regional maritime order, the timing to involve the other major users of the area e.g. Japan, USA and Soviet Union is critical.

The Antarctic Treaty as a Model

The applicability of the 1959 Antarctic Treaty as a model for resolving the conflicting claims in the South China Sea is often raised by scholars. How relevant is the 1959 Antarctic Treaty to the problems in the South China Sea? A few words on the Antarctic Treaty are in order. The treaty is unique in international affairs. It was negotiated in 1959 in Washington by the states which had previously established scientific stations in the Antarctic during the International Geophysical Year (IGY) (1957-1958). The Treaty envisages that the continent shall be used for peaceful uses only and that any

measures of a military nature is prohibited (except military personnel involved in scientific research). Freedom of scientific investigation is guaranteed and that nuclear explosions and toxic wastes disposal are forbidden. For these reasons, the 1959 Treaty is often referred to as the first attempt at non-nuclearization. The treaty also provides for functional cooperation between the parties in scientific research mainly with regard to the conservation of the environment. The ecological aspect of the treaty is very extensive.

Recently, there have been serious attempts by some leading authorities (most notably Ambassador Beeby of New Zealand) to institutionalize an agreement on mineral exploitation. This treaty has failed to receive ratification from key treaty members e.g. Australia.

It has been argued that a treaty on mineral exploitation contravenes the intent of the 1959 Antarctic Treaty. This has been the position of Malaysia and other like-minded countries in the United Nations General Assembly. For such a treaty would actually effectively shift the focus of the treaty on scientific research, away from the original design, into an economic venture.

Perhaps the part dealing with functional cooperation especially in scientific research and ecology, and the manner the states side-step the issue of conflicting claims can be relevant to our discussion. But certainly the entire treaty may not be very relevant as it is not possible to compare the situation in the Antarctic with that of South China Sea.

In the first place the political situation which spawned the 1959 Treaty was different. The motivations were different and the issues surrounding the treaty were also

different. Unlike the Spratlies, the Antarctic is off main navigation routes. It is a contiguous continent. It has minimal strategic significance. And more significantly, there was no deployment of military elements prior to 1959 or in 1959 at the time when the treaty was finally negotiated in Washington D.C.

Another unique aspect of the treaty is that it provides all parties free access to all the scientific stations at all times. Free exchange of information on each other's scientific activities and regular meetings have provided the Antarctic Treaty with some transparency. Outside the treaty framework it is less transparent. The *reluctance* of the 1959 Antarctic Treaty parties to inform and share with other international organizations (e.g. the United Nations) and the international community their findings has been criticised in international forums.

Of course, the most critical aspect of the Antarctic treaty system is its two-tier treaty arrangement which in the opinion of some experts lacks elements of democratic practices. Moreover only those states which have the means and capability to conduct scientific research on a sustained basis in Antarctica can become Consultative Party members. All others can accede to the treaty but without voting rights. The requirement for wintering and undertaking scientific expeditions to Antarctic and the ability to conduct scientific investigation on a sustained basis effectively limits the effective participation of most Third World countries. It is against such an unfairness that the UNGA has taken up a position on Antarctica.

How do the parties to the 1959 Treaty side-step the issue of conflicting claims? The claims of the seven cover the entire Antarctic

continent (Australia, New Zealand, France, Norway, Argentina, China and Great Britain), five of which overlap. Five original members of the Consultative Parties (Japan, Belgium, South Africa, USA and Soviet Union) do not assert any claim as they don't think it necessary to do so as the treaty allows them free access to all parts of the Antarctic continent including the claimed areas. This arrangement has led one authority to suggest that in the case of the US it has achieved a status of "undefined rights" on Antarctica, more important than claiming a small sector. It is also important to recognize that both superpowers, USA and Soviet Union, do not recognize the claims of the other seven nations.

Article IV is the cornerstone of the treaty. Its origin has been traced to a 1948 arrangement among interested parties and the 1957 gentlemen's agreement which adopted a resolution to confine the continent only to "exclusively scientific" mode. Financial and political questions were not its concern.

The relevant part of Article IV is reproduced here:

1. Nothing contained in the present Treaty shall be interpreted as:
 - a. a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;
 - b. a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;
 - c. prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right of or claim to territorial sovereignty in Antarctic.
2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to terri-

torial sovereignty in Antarctic or create any rights of sovereignty in Antarctic. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctic shall be asserted while the present Treaty is in force.

The Article is kept deliberately ambiguous to facilitate an agreement to disagree on fundamental issues e.g. territorial claims and sovereign right. Article IV is also intended to preserve the interests of at least three different parties: the claimants, the non-claimants and potential claimants. Under closer scrutiny Article IV has the effect of "freezing" the claims during the period of the treaty (due to be modified in 1991 if there is consensus from all the members of the Consultative Party).

Nothing in the Treaty shall be interpreted as a renunciation or diminution of any basis of claim to territorial sovereignty which any party may have in the future (i.e. within the duration the treaty is in force). A new claim or enlargement of an existing claim "shall not be asserted." Yet some treaty members have found it convenient to claim a 200 mile EEZ. On termination of the treaty, the legal situation will return to status quo ante.

The freezing of the claim "concept" is in line with our proposal for a concurrent jurisdictional regime along the line of a joint development-type model. The concept of reverting to the *status quo ante* following the termination of the treaty is also applicable. The prohibition of enlarging the claim is akin to our proposal against further creeping annexation.

It is fair to suggest that some aspects of the 1959 Antarctic Treaty can be extended to the Spratlies -- especially the parts pertaining to the conflicting claims (Article IV) and also those provisos pertaining to cooperation in functional sectors (e.g. the Agreed Measures

for the Conservation of Antarctic Fauna and Flora, the Convention for the Conservation of Living Resources e.g. seal, krill and other cooperative measures). The part dealing with exchange of scientific information, personnel and data has given transparency to the treaty system and could be emulated.

However, the parts pertaining to the non-militarization of the area may not augur well with the situation in the South China Sea especially the Spratlies, because it may mean the dismantling of the present military deployments. Although it is ideal as a policy option, such a policy is not practical to pursue. Nonetheless, the freezing of military activities beyond normal operational routines (i.e. recognition of the present status quo) is desirable.

Conflict Resolution Provisions

Part XV of the 1982 Convention sets out the full procedures for settling disputes concerning the interpretation or the application of the Convention. By emphasising the need to settle disputes by peaceful means the convention has also built into it a system for confidence-building-measures including an obligation for disputing states to exchange views concerning the interpretation and the application of the convention (Article 283). Article 284 places special premium on conciliation as a procedure for resolving differences.

Section 2 of the Part XV lists down the procedures for binding decisions. Article 287 obligates all states when signing, ratifying, acceding to the Convention or at any time to choose any or a combination of the following forums whose decision will be binding: (1) the International Tribunal for the Law of

the Sea; (2) the International Court of Justice; (3) an Arbitral Tribunal and a Special Tribunal.

The problem is really not the lack of a proper forum or forums for dispute settlement. The real issue is whether states possess political will to pursue such a course or not. More often than not, domestic politics tend to complicate genuine efforts at conflict resolution. The final resolution of the Sabah issue is a case in point. The late President Marcos gave an undertaking in 1971 that he would take steps to drop the claim, which he made in Malaysia without any coercion or pressure.

There have been cases where the ICJ has, in similar situations, ruled that such a unilateral declaration from a Head of Government is binding on the state. However, although understandably, the government of the Philippines then lacked the political will to bring the matter to a conclusive end. Much to the chagrin of the Malaysians, the Sabah issue has remained unresolved. Nonetheless, many Malaysians are confident that the present government in the Philippines will make every effort to normalise the situation and eventually drop the Sabah claim.

Owing to the sensitivity surrounding the choice of a proper compulsory forum, the drafters of the 1982 Convention has taken extra care to build within it a structure of limitations and exceptions to facilitate the process for conflict resolution. Article 297 makes it almost obligatory for states to submit to compulsory procedures the following:

1. offences relating to the freedoms and rights of navigation, overflight or laying of submarine cables and pipelines or with regard to other internationally lawful uses of the sea specified in Arti-

cle 58 (dealing with rights and uses of other states in the exclusive economic zone);

- 2. protection and preservation of the marine environment;
- 3. marine scientific research in the EEZ;
- 4. fisheries except that the coastal state shall "not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to living resources in the EEZ" including the discretionary powers to determine the allowable catch, its harvesting capacity, the allocation of surplus and the terms and conditions of its conservation and management laws and regulations.

On the other hand, a state has the right to exclude certain disputes from binding procedures (except with mutual consent). The following disputes are excluded from compulsory procedures: (1) pertaining to sea boundary delimitations; (2) pertaining to military activities; (3) pertaining to decisions of the Security Council.

Conclusion

The situation in the South China Sea is very precarious. We cannot let things remain as they are. A tiny spark, an untoward incident, can set off an explosion which could plunge the region into turmoil. If we do not do anything positive now the situation will be ripe for the military to exert its might making it difficult to resolve the problem by peaceful means. We must prevent a military conflict and that we should prevent a military power from exercising hegemony in our midst.

Time is not on our side. We have to act fast to ensure a stable maritime regime in the South China Sea. Thus we must undertake confidence-building-measures seriously. We should make every effort to scale down the present levels of hostilities from escalating into military violence. Prevention is better cure.

Managing Potential Conflicts in the South China Sea: Political and Security Issues

LEE Lai To

STRADDLING the major sea lanes between the Indian and Pacific Oceans and by virtue of its proximity to one of the world's important international waterways, the Straits of Malacca, the South China Sea islands have obvious strategic importance. The possibility of large oil finds in the region and the presence of other resources have given added importance to the whole area. In view of the strategic and economic value of these islands, islets, reefs, shoals and atolls, it is only natural that the littoral states of the region, and extra-regional powers would be concerned with the conflicts in the South China Sea.

So far the mode of conflict resolution in the area has been through the use of force. A brief but significant military confrontation took place between Beijing and Saigon in the Paracels in January 1974. A second one took place between Beijing and Hanoi in the Spratlys in March 1988. The Chinese seemed to be the victor in both instances. However, the issues are far from settled. In fact, the ownership issue in the case of the Spratlys had been complicated by the involvement of

not only China and Vietnam, but Taiwan, the Philippines, Malaysia and possibly Brunei. In the meantime, most, if not all, of the parties involved are trying to maximize their positions in the Spratlys. More important and serious is the increased militarization in the Spratly group.

The Military Buildup

Of the four major groups of islands, the Paracel, Spratly, Pratas and Macclesfield Bank, at issue is primarily the ownership of the first two. Both Vietnam and China claimed that they had traditionally included the Paracels and Spratlys as their territories. After the Second World War when the Japanese gave up, among other things, the islands in the South China Sea, the Chinese Nationalists occupied the Spratlys and Paracels, placing these islands under several administrative arrangements, including direct naval control. The naval forces were removed when the Nationalists were forced to

leave for Taiwan from the mainland in 1949.

However, its troops returned to the islets in the 1950s and in the case of the Spratly group, they were stationed, at the latest by 1956, on a large island, Itu Aba. Taipei, however, did not send any of its forces to the Paracels probably because the group was too close to Hainan Island controlled by the Chinese communists. For the Chinese communist regime, although it has been making statements claiming ownership of all the islands in the South China Sea since the early 1950s, it nevertheless did not seem to have any military presence in the area until the early 1970s when it was known that Beijing had set up an observation and communication post on Woody Island, one of the Paracels, and by the end of 1971 naval defence of the island had been strengthened and a militia detachment was posted there. It was also known that Beijing from time to time stationed troops on other islands of the Paracels and carried out patrols in the area.

In the meantime, the Vietnamese had also laid its claims to the islands. At the time of the signing of the peace treaty in San Francisco, the Vietnamese delegation to the peace conference issued a statement "confirming" that the Paracels and Spratlys were Vietnamese territory. Subsequent statements from Saigon reiterated its incorporation of the islands into Vietnam. It further claimed that it had a meteorological tower on at least one of the Paracels and that "it has been the practice of the Vietnamese authorities ... to position troops and exercise ... administrative right on these islands and the Vietnamese navy has constantly conducted patrols to ensure transportation in these sea areas."¹

¹Lee Lai To, "The PRC and the South China Sea," *Current Scene*, February 1977, p. 7.

Chinese and Vietnamese military presence in the South China Sea was later on joined by the Philippines. While it did not really support an earlier claim of part of the Spratlys by a Filipino, Tomas Cloma, in 1956, it had occupied some of the islands of the group, known as Kalayan or Freedomland by the early 1970s. Manila claimed that the islands were *res nulli* and could be acquired by any nation according to the modes of acquisition recognized by international law -- among them occupation and effective administration. It also argued that the islands were vital to the security of the Philippines because of their proximity to Palawan.

The first military confrontation finally took place in January 1974 between China and South Vietnam. It is not the intention here to delve into the details of the battle of the Paracels here. Suffice it to say that the South Vietnamese were dislodged from the island group by the Chinese in the battle forcing the former to move its troops to the Spratlys. It was known that the Chinese also tried to take over some of the Spratlys but failed because of the resistance from Saigon there.² The successful use of force by the Chinese to substantiate its claims, at least in the case of the Paracels, probably set a menacing precedent inviting others to do likewise to beef up their military presence there to protect their interests.

At the time of the first showdown between Saigon and Beijing, Hanoi did not criticize China openly. However, it already showed signs of uneasiness with the Chinese action as it stated that "the frequent com-

²Marko Milivojevic, "The Spratly and Paracel Islands Conflict," *Survival*, January/February 1989, p. 71.

plex disputes over territories and frontiers between neighboring countries demand careful and circumspect examination. Countries involved should settle such disputes by negotiations and in a spirit of good neighborliness."³ The Viet Cong in the south took a similar position. As a result, it was not surprising that Hanoi sent its naval forces to reoccupy some islets in the South China Sea, notably six islets of the Spratlys after the fall of Saigon in 1975. The Chinese who had been occupying primarily the eastern Paracels after the 1974 conflict did not make any major efforts to dislodge the Vietnamese communists from the islets immediately. However, it was obvious that Beijing would not concede to Hanoi on this issue, especially when Sino-Vietnamese relations began to deteriorate sharply starting from the second half of the 1970s.

In the meantime, Malaysia also joined to squabble as demonstrated by its map issued in December 1979, notifying the world that its sovereignty over its continental shelf included the islands and atolls south of the Spratlys. The proximity of the southernmost Spratly islets to Malaysia, the oil potential of the area and the many claims by others which are considered to be an encroachment into Malaysia waters had probably contributed to Kuala Lumpur's determination to stake out its claims. In fact, it was known that Malaysia later on deployed its military personnel to a permanent naval station at Tarumbu Layang-Layang to protect its interests. While this complicated the situation in the Spratlys, there were no major conflicts in the area garrisoned with troops from Vietnam in the west, the Philippines in the east, Malaysia in the south and Taiwan near the centre of the Spratly group. However, a ma-

jor conflict took place in March 1988 when the Chinese clashed with the Vietnamese.

For the policymakers in Beijing, they must be concerned with the increasing perpetuation of the status quo which excluded China in the Spratlys. With the desire to teach the Vietnamese a lesson again in view of Hanoi's alignment with Beijing's arch rival, Moscow and its invasion of Cambodia and to remind others that Beijing could use force on questions of sovereignty, it was not surprising that China might take military action against Vietnam in the Spratlys. However, the Chinese military strength in the 1970s was probably too weak to venture into an area which is nearly 1,000 km from the Chinese mainland. China's attack against Vietnam to teach the latter a lesson in 1979 ended with heavy casualties of its own. The humiliation would caution the Chinese to be more prepared with another attack against the Vietnamese.

With the launching of the four modernizations under Deng Xiaoping, there has been a general emphasis on professionalism, science and technology in China. Although defence may be the last of the four modernizations and that there had been cuts in the overmanned army, the more streamlined People's Liberation Army (PLA) was able to acquire more weaponry, particularly for the navy and air force. In-flight refueling, the use of helicopters to bring supplies to ships, new warships and supply vessels capable of longer-range patrols have made it possible for China to show the flag in distant waters.

To lessen the logistical and tactical problems in furthering its physical presence in the South China Sea, the Chinese were known to have fortified the Paracels. Forces on the Paracels were subsequently reinforced by defence units. Chinese naval exercises in

³Lee, "PRC and the South China Sea," p. 8.

the area have also gradually been stepped up and in late 1987, China's navy conducted its first extended exercise deep in the South China Sea. The Spratlys were the obvious target for China to stake a claim. As the islets in the Paracels are still too small to stage a major operation in the South China Sea, it was natural that Beijing had to rely on its southernmost and the largest island close to the Spratlys, Hainan.

It was known that since 1979 there has been an expansion in air, naval, ground and missile forces on Hainan Island. As such, China was quite ready to use its new naval power to assert its claims in the South China Sea by the time when it claimed to be "forced to counter attack in self-defence" in the battle of the Spratlys in March 1988.⁴ While it was difficult to determine who really fired the first shot, it was generally agreed that the Chinese provoked the incident. The end result was the success of the Chinese in establishing a foothold in the Spratlys by the use of force against the Vietnamese. Beijing calculated rightly that Moscow would not come to the rescue of Hanoi in view of Moscow's emphasis on relaxing tension with it. The battle apparently added more pressure on Hanoi not to have any expansionist design in the South China Sea or Indochina. More important, perhaps, the incident demonstrated Beijing's desire to play a major role in the Southeast Asian waters.

By flexing its naval muscles in the area, Beijing reiterated its preparedness to use force to back its stance on sovereignty issues. In view of the fact that China intended to develop Hainan Island, it might also want to secure the waters around the island by having more influence over the major sea lanes which could affect the development of the

Island. And in April 1988, Hainan, which was originally a part of Guangdong province, was made officially into another province with the Island designated as China's largest special economic zone which had jurisdiction over islands in the South China Sea.⁵

China's military operation in March 1988 would no doubt tarnish her image as a peace-loving country and send warning signals to others, especially the neighboring non-communist countries in Southeast Asia, that behind the Chinese smiling diplomacy lay a determined Beijing to safeguard what it considered to be its territorial integrity. Although Beijing limited her action against Hanoi, the incident made the area become more militarized as all claimants were likely to scramble to reinforce their positions. Notably, Hanoi tried to reinforce its military in the area to occupy more islets. It was also expected that the Chinese would beef up its military presence there and *allegedly* Beijing was building an airstrip on one of the Spratlys in December 1989.⁶

Taiwan, which claimed all of the islands in the South China Sea and whose troops were stationed in Itu Aba, did not really want to get involved as it had been its policy to avoid having military clashes with Beijing or getting entangled in such incidents between Beijing and other claimants. However, according to its foreign ministry, Taipei's troops would defend its military outposts, especially Itu Aba, against all intruders, whether they came from China or other countries.⁷ It is very clear that Taipei's troops have in a way helped Beijing to claim

⁵*Beijing Review*, 2-8 May 1988, p. 14.

⁶*Straits Times*, 23 December 1989. This was disclosed by the foreign ministry spokesman of Hanoi.

⁷*Far Eastern Economic Review*, 5 May 1988, p. 26.

⁴*Beijing Review*, 21-27 March 1988, p. 9.

the Spratlys as both sides or the Taiwan Straits acknowledge that Taiwan is part of China and except for a short period of absence, Nationalist troops have been in Itu Aba since the end of the Second World War. It should be noted that Taiwan also maintains troops elsewhere in the South China Sea, such as the military outpost on the main islet of the Pratas group.

Taiwanese troops in the South China Sea have apparently been well maintained and replenished by Taipei and its defence minister announced in April 1988 that Taiwan's garrison in the South China Sea was being reinforced. Its defence minister, in a briefing after the March 1988 incident, also mentioned that Taiwan, if asked by China to help defend the Spratly group from a third party, would be prepared to do so.⁸

As for the other ASEAN states directly involved in the dispute, namely, the Philippines and Malaysia, it seems that they were not really prepared to clash with other claimants militarily, especially China or Vietnam. However, Manila did reiterate its claims on Kalayaan and expressed concern with the incident in March 1988 and its desire to settle the disputes with other parties peacefully.⁹ And in early April 1988, it was known that the Philippines and Vietnam had reached an agreement to resolve their disputes peacefully.¹⁰ As for Malaysia which had occupied three islets to project its claims in the area, it urged all parties to negotiate about their claims in April 1988, insisting at the same time that it would maintain its own rights.¹¹ However, its navy was known to

have seized three Philippine fishing vessels near Rizal reef and detained 49 crewmen for fishing without a permit in the same month.¹²

It is clear that tension is rising in the South China Sea, especially the Spratlys. With the concentration of opposing forces which would detect quite easily each other's movements in some islets in the semi-enclosed area, the risk of another military confrontation, whether premeditated or by accident, is always there. While the parties involved may be restrained from engaging in another military conflict, it is obvious that this will not be enough as emotions may run high in such territorial conflicts which involve national pride, security and vast potential resources.

In Search of a Solution

In a way, the Chinese have chosen the military option to force the issue out and try to resolve it in its favour. Now that it has achieved its objective in establishing its physical presence in the Spratlys, it is not likely, at least in the near future, that it would escalate the conflict and attempt a full-scale military campaign against Hanoi in the Spratlys. For one thing, in spite of its enhanced naval power, such an endeavour would pose tactical and logistical problems for Beijing to accomplish its mission in waters relatively far away. For another, although Beijing would have no qualms about attacking what it considers to be an ungrateful, rebellious and expansionist Hanoi, it should be wise enough to realize that the situation in the Spratlys, unlike that in the Paracels where the conflict is primarily a

⁸ *Ibid.*

⁹ See the documentation in *Contemporary Southeast Asia*, June 1988, pp. 114-116.

¹⁰ *Economist*, 21 May 1988.

¹¹ *Ibid.*

¹² *Far Eastern Economic Review*, 30 March 1989, p. 20.

bilateral issue in Sino-Vietnamese relations, is much more complicated and would affect Sino-ASEAN relations and Sino-Taiwan relations.

Further expansion into other islets of the Spratlys will risk antagonizing not only the ASEAN states involved, namely, Malaysia and the Philippines, but possibly others, especially Indonesia, ASEAN's largest country with which Beijing has been discussing ways and means to normalize relations. Further moves by Beijing to expand its influence in the Spratlys could also antagonize Taipei. While Taipei's former Defence Minister mentioned that Taiwan would help China in the conflict, he also knew that it was only theoretical and China would need no help. He further added that should Beijing's troops land on Itu Aba to dislodge the Taiwanese there, it would mean war between China and Taiwan.¹³ As a result, China would probably want to limit its military pressure on the Vietnamese in the area for the time being.

Quite obviously, the use of force by China has not resolved the differences among the parties concerned. Claims and counter-claims based on extensive historical records, international law, and other arguments continued to be advanced to present their cases. To a certain extent, the conflicts have been complicated by the final draft of the Third United Nations Convention on the Law of the Sea (UNCLOS III) of 1982. No doubt the draft has laid down the general principles to be followed, notably a 12-mile territorial sea, a 200-mile exclusive economic zone, a continental shelf defined as the natural prolongation of the land mass of 200 miles from shore or 350 miles in some in-

stances, transit passage and rights of overflight over international straits and obligations and qualified acceptance of certain rights of archipelagic states. However, it remains to be ratified and put into effect.

Moreover, if one were to use the general principles of the draft in earnest and apply it in the case of the South China Sea, it will definitely intensify the quarrels over boundaries, resources and other rights among the states involved. Because of the multilateral nature of the conflicts, clear divisions or subdivisions or boundaries are difficult, if not impossible, to delineate. Theoretically, resorting to international arbitration by an international tribunal for the law of the sea, the International Court of Justice or some other bodies is possible. However, the complexity of the disputes may make it impractical. If ever this is used, the process will be time-consuming, arduous, and probably fruitless in the end. This will discourage any inclination to look for a legal settlement. The uncompromising attitudes and emotionalism of at least some of the parties involved would also render a legal solution almost impossible. Besides, not everyone will accept international law without any question.

Notably, China has been very sceptical of the applicability of international law to her disputes. She considers international law as something that would work more for the interests of the developed world as China, or for that matter, many countries in the developing world did not take part in the drafting of the legislation. Consequently, Beijing may not have much confidence in the international legal system and prefer not to refer her disputes with other states to outside arbitration and subject herself to the long and cumbersome legal process.

¹³*Far Eastern Economic Review*, 5 May 1988, p. 26.

If one hates to see that might is right in the settlement of the disputes of the South China Sea, and that it is not really feasible to use international law to settle the problems, what is to be done then? Clearly, no one will benefit if tension is high and it is dangerous to cross the waters in the South China Sea. The sensible thing to do is to stop the escalation of the militarization of the area and rely on diplomacy to work for a peaceful settlement of the disputes. However, this is easier said than done.

For the de-escalation of the military buildup, it would be difficult to enforce strictly. Firstly, unilateral de-escalation depends a lot on the political will of the parties and a spirit of mutual trust which at this time is lacking. Secondly, mutual surveillance by conflictual parties may create more problems. Thirdly, there is no effective mechanism to monitor the situation and that some will not accept such a mechanism in the first place. Lastly, while it is ideal for the countries involved to work out a multilateral agreement to reduce the deployment of forces to the islets or simply preserve the status quo, it is based on the precondition that they are willing to talk, negotiate and compromise with one another to stop the hostilities. This precondition, however, does not exist. It is clear that the major antagonists of the conflicts, China and Vietnam have not agreed to talk on the issue as China refuses to talk to Vietnam although the latter had offered to negotiate with the former.

Moreover, the dispute in the South China Sea is but one aspect of the larger Sino-Vietnamese conflict. De-escalation of the Sino-Vietnamese conflict in the South China Sea depends to a large extent on the overall relations between Beijing and Hanoi. One is only reminded of the Sino-Soviet border

disputes which could by no means be tackled at the time of the conflicts between Moscow and Beijing but had become negotiable only with the obvious improvement of relations between the two countries. As such, the present Sino-Vietnamese conflict will not be conducive to the resolution of the disputes in the South China Sea.

Moreover, the Chinese claims are complicated by the simultaneous presence of troops from Beijing and Taipei in the Spratlys. It is not the intention here to deal with the problems of two Chinas here. Suffice it to say that most countries in the Asia-Pacific region are following a *de facto* one-China, one-Taiwan or even two-China policy. Because of the economic strength of Taipei, many states, including the ASEAN states which have already been following a one-China policy of recognizing Beijing as the sole legal government of China, would like to further their economic co-operation with the Nationalists who in turn want to upgrade their ties with the region and the world in view of their diplomatic isolation. Taipei, in fact, is even interested in expanding its interests into communist Indochina, not to say the non-communist states in the region. It has also opened its door, at least at the so-called people-to-people level, to allow one interactions between the peoples of Taiwan and mainland China in launching what it calls a "political offensive" against Beijing.

Beijing apparently also tries to make use of these moves to promote the reunification of China. As far as the South China Sea issue is concerned, Beijing seems to have no intention to antagonise Taipei by taking provocative action against the latter's troops in Itu Aba as the former is trying to promote its "one country, two systems" in reunifying China. Presently, nobody seems to be offer-

ing to negotiate with Taiwan. But the fact is Taipei was the first to station troops in the Spratlys and Pratas to project its claims over all the islets in the South China Sea after the second world war and its troops in the Spratlys are located on the largest island and probably one of the best equipped in the area. The "Taiwan problem" in the South China Sea conflict is as a result a question that has to be dealt with in the search for a solution.

Although Chinese-Vietnamese relations may be one of the important factors in determining the outcome of the conflict resolution process under consideration, the involvement of the ASEAN states is another factor that has to be taken into account. Vietnam has indicated its interest to talk with the ASEAN states involved in the disputes and to resolve the issues peacefully. China, though refusing to talk to Vietnam, has indicated to ASEAN, at least in the case of the Philippines, its desire to shelve the issue and move on to other areas of co-operation.

In the case of Malaysia, although China's claims include Tsengmu Shoal and several other shoal groups close to the Sarawak coast and within the continental shelf claimed by Malaysia, Beijing tried to avoid to have any public confrontation with Kuala Lumpur over their respective claims. In addition, except for including Tsangmu and several other shoals in its territorial claims, Beijing has not carefully delineated its claims in the area.¹⁴ Although China is definitely interested in reserving "the right to recover all these islands (Spratlys) at an appropriate time,"¹⁵ it is not in a hurry to settle the disputes.

¹⁴Marwyn S. Samuels, *Contest for the South China Sea* (New York: Methuen, 1982), p. 163.

¹⁵*Beijing Review*, 23-29 May 1988, p. 5.

China at present, and especially after the Tiananmen incident of June 1980, has more than enough domestic problems to deal with. In view of the criticisms against it by the industrialized countries and some half-hearted economic sanctions against China, Beijing is keen to improve its image abroad and seek more co-operation from other states. Because of the generally muted and rational responses of the ASEAN states towards the breakdown in China, Beijing would value such "friendly" reactions, concentrate on the more co-operative areas with ASEAN and shelve or play down its conflicts with the involved ASEAN members. The trouble is that while there may be moves to settle or dilute the disputes by the two communist states in dealing with the ASEAN states, the latter may be seen to be siding or conspiring with just one communist state and that any respective agreement on the disputes between the ASEAN states with Vietnam or China may be considered to be concluded at the expense of the other communist state, on top of these, the ASEAN states have also their own share of differences in the South China Sea and adjacent waters.

While it is heartening to see that there are bilateral or even trilateral agreements and plans on such areas like the delimitation of continental shelf boundaries and joint exploration in areas where their claims overlap, the ASEAN states have yet to resolve and settle many of their differences and come up with an ASEAN position with regard to the conflicts in the South China Sea. Even though the ASEAN states have a habit of close consultation and may subside their conflicts of national interests for the sake of ASEAN solidarity, the resolution of the intra-ASEAN disagreements on the waters of the region will be time consuming, and more importantly, dependent upon the

priorities of the individual ASEAN states and the political will and understanding of the disputants.

Concluding Observations

The above analysis has concentrated more on the conflictual claims on the islets and the states directly involved in the contest in the South China Sea. It must be emphasized that other states, especially the US, USSR and Japan would also be concerned with the developments in the area as the security of the sea lanes there and the passage through the adjacent areas, especially the Straits of Malacca, would be of considerable importance to them. As an important international maritime corridor between the Pacific and Indian Oceans, the interests of the other major powers would be affected if the freedom of passage is hampered because of the flare-ups in the South China Sea. These major powers are also important impetus to the development of the region, with the US and Japan interacting more with non-communist Southeast Asia and the Soviet Union more with Indochina. Any disruption of the traffic will harm the interests of all parties concerned. Moreover, the two superpowers have their military bases in Southeast Asia. The American military in Subic Bay Naval Base and Clark Air Base are stationed in the Philippines, a party involved in the South China Sea conflict, and the Soviet military in Cam Ranh Bay and Da Nang are stationed in Vietnam, another party of the conflict. The two superpowers have so far refrained from getting directly involved in the quagmire although it was known that they had provided intelligence on the military manoeuvres in the South China Sea for their respective allies at the time of the

armed confrontations. However, the possibility of superpower involvement could not be ruled out if their respective allies involved in the disputes seek help from them or one or more of the disputants of the South China Sea conflicts inconvenience, not to say block, the free passage of the waters in the area. Thus the Spratlys issue, or for that matter the problems in the South China Sea, may have to take into account the interests of these other extra-regional powers.

It would seem that it is premature and too idealistic to propose any grand design which could solve the multilateral conflicts in the South China Sea. The complexity of the conflict and rivalries of the disputants, the larger and deeper political divisions in the Southeast Asia region and the complicated relationship between regional states with extra-regional actors whether directly involved in the disputes or not, would suggest that practical and realistic ways and means to settle the issues will take time to evolve. Moreover, now that the troops of the disputants are more or less in place, it seems that any move to tip the delicate balance in the Spratlys will greatly increase the chances of another military confrontation.

As far as the ASEAN states are concerned, there is now more interest from some quarters to examine the issues in the South China Sea. This is especially true when some consider that the resolution of the Cambodian conflict is in sight. These people may think that the South China Sea could be a succeeding rallying point to promote ASEAN solidarity. However, while there may be progress in the resolution of the Cambodian conflict, it is obvious that there are still a lot of problems in restoring peace in Cambodia even if the warring factions are able to settle their differences by force or

otherwise. Thus the situation in Indochina may continue to be a major security concern for ASEAN for quite some time.

As for the use of the South China Sea conflict as a rallying point to promote ASEAN solidarity, it is based on the assumption that there is general co-operation and agreement among the member states on the related issues. Since numerous overlapping claims among the ASEAN members still exist, it will naturally take time to sort out the differences. ASEAN should also bear in mind that any suggestion to deal with the conflicts in the South China Sea should not only be in the interest of the individual ASEAN states, but also that of the Indo-chinese states, China and last but not least

the other extra-regional powers like the US, USSR, Japan and others. If the interests of any of these parties are not met to their satisfaction, it would give rise to more problems and render any agreement on the South China Sea sound good on paper at the most but being ignored or slighted in reality because of its impracticality or insensitivity, real or imagined, to the needs of others. As such, trying to manage, not to say settle the disputes in the South China Sea will be a herculean task. If ever one wants to take up the issues, the ASEAN habit of "making haste slowly" should be heeded and that there should be a realistic recognition that it takes time for pragmatic solutions to evolve in view of the many imponderables and complexities of the South China Sea disputes.

Navigation, Communication and Shipping in the South China Sea

George A. COQUIA

Introduction

STRATEGICALLY located between two major oceans, namely, the Indian and Pacific Oceans, and between the Asian mainland and the insular Southeast Asia is the South China Sea dotted with several hundred, tiny islands. Among these are the Spratly Island group which is largely composed of banks, reefs, cays stretching from a point 04°N and 109°E northeastward to a point at 11°31N and 117°E. Only a few of the islands are habitable. In recent times, a number of claimant states have occupied the Spratly Islands, Amboyna Cay, Itu Aba Island, Namyit Island, Loaita Island, Lankian Cay, Thitu Island, the North Danger Southeast Cay and Northeast Cay.

With conflicting claims by China, Malaysia, Philippines, Taiwan and Vietnam, there is a growing feeling that the South China Sea can be a source of conflict and tension which will be felt by most nations in Southeast Asia. On the other hand the area can be a

source of joint cooperation and development which will enhance the harmonious relations among all the states concerned. This paper limits itself on the aspects of navigation/communication/and shipping in the area.

Navigational Importance of the Area

The South China Sea is within the international sea-lanes and air routes between Borneo, Indonesia, Vietnam, the Philippines and mainland China. Moreover, it is along the shipping routes linking the Far East and East Asia with Europe, Africa and the Middle East through the Straits of Malacca. The world's second most busy seaway, the Malacca Strait, is along the way to Vladivostok to and from the Indian Ocean. Over one hundred vessels transit everyday through the strait.

As to air routes, all trips from Manila to Malaysia, Singapore, Borneo and Indonesia and back, pass through the air lanes of the South China Sea.

Thus, needless to say, the South China Sea is strategically located for trade and commerce for the whole region. To whom-ever jurisdiction over the various islands would fall, it will have an effect on maritime commerce.

Japan, the world's third largest economy without a domestic supply of important mineral resources, relies on maritime commerce to import as much as 600 million tons of raw materials and to export 60 million tons of manufactured goods a year.

The US and USSR use these sea-lanes for both naval and commercial purposes. The old dictum that trade follows the flag remains as valid as ever. The rapidly growing Soviet merchant marine is also making its presence felt to Japanese and Western shipping industries. Operating as an outsider, the Soviet Far Eastern Shipping Company (Fresco Line) is reportedly charging rates as much as 60% below those of the Conference line. The Vladivostok Indian Ocean route can never be more important.

In the case of the US, the South China Sea is one of the four alternative eastbound routes used by tankers sailing for the West Coast of the US from the Persian Gulf. The South China Sea region is the nexus for energy material transportation between the Middle East and East Asia and as earlier mentioned, the United States. More than ninety percent of Japan's oil imports move through this region as does most of the oil supply of the Republic of Korea. A break in the subtle chain of some two hundred tankers en route would mean a fatal clot in Japan's "life blood." The oil embargo of 1973-1974 revealed Japan's vulnerability and its dependence on the sea-lanes in the South China Sea.

On the other hand, Indonesia, Brunei Darussalam, and Malaysia export substantial volumes of oil products and would depend on uninterrupted passage through vital parts of the South China Sea.

Some nuclear-spent fuel being moved from Japan to Europe also used maritime transportaion. Such shipments may increase as more nations employ nuclear energy. Uranium ore may soon move through the region from Australia to Japan.

Areas of Tension and Conflicts

The South China Sea, while extensive in its areal extent, is a semi-enclosed sea in its geographical setting. With the imminent entry-into-force of the UN Convention on the Law of the Sea, the extended maritime jurisdiction of riparian states encompasses the entire area. Certain activities or issues, however, transcend maritime jurisdictional zones, and these could best be addressed on a regional cooperative basis. Among these issues, navigation/shipping/communications are especially significant because of their international implications.

Tensions and conflicts, even disagreements, among the riparian states of the South China Sea arise primarily owing to the extended maritime jurisdiction. The exclusive economic zones of most bordering states overlap with adjacent neighbours, thus giving rise to boundary delimitation problems. The ownership of numerous small islands or islets, in the South China Sea, has aggravated this problem and even raises tensions on territorial sea or continental shelf rights. Among these tensions, that involving Malaysia, the Philippines (both members of ASEAN), Vietnam, the People's Republic of

China, and Taiwan would be a classic example. The tension between PRC and Vietnam in the South China Sea has even degenerated into open conflict. The Law of the Sea Convention (LOSC) has anticipated this problem; thus in Art. 74 and Art. 83, it provides that "the delimitation of exclusive economic zone (or continental shelf) between States with opposite or adjacent coast shall be effected by *Agreement* on the basis of international law...." Among the riparian states, Indonesia alone has concluded agreements with some of her neighbours regarding certain aspects of maritime delimitation. Even here some issues remain: Indonesia and the Philippines have yet to negotiate an agreement on the Celebes Sea maritime boundary. And the other countries bordering the South China Sea must do likewise to ease tension/conflict in the area. It is significant that extended maritime jurisdiction, while basically resource-oriented, vitally affects navigation/shipping/communications. Thus in Art. 58 of the Convention, "in the exclusive economic zone, all states enjoy freedom of navigation, laying of submarine cables and pipelines"

In any discussion on tension/conflicts/disagreements of riparian States in the South China Sea, it may be wise to consider perceived areas of national interest. Marine national interests among riparian States in the South China Sea are varied and range from minor to major in category. For example, Thailand and the Philippines have distant fishing fleets, while Singapore, Brunei, and Malaysia could consider this activity of relatively minor importance. Singapore, lying strategically in one of the world's busiest straits is a major shipping port and has extensive facilities for oil transshipment. She would therefore be deeply interacted in any discussion on navigation and shipping in the

South China Sea. Brunei, Malaysia, and Indonesia are oil-producing states and some of this production comes from offshore deposits. All these nations could be affected by decisions on navigation/shipping in the South China Sea.

Cooperative Navigational Scheme

Without, at this time, determining the ownership of the islands in the South China Sea, the claimant States, namely, China, Malaysia, Philippines, Taiwan, and Vietnam, can derive the most beneficial use of the South China Sea by cooperating in navigation, communication, and shipping in the area. The basic principles of the cooperation among the claimant states can be drawn from the novel concepts that emerged in the Third United Nations Conference on the Law of the Sea. Among the concepts that predominated in the deliberations of the conference which resulted in the adoption of the UN Convention on the Law of the Sea is the doctrine of the "Common Heritage of Mankind," international and regional cooperation among states, and the conservation and preservation of the resources of the sea. While the concept of the Common Heritage of Mankind applies to the mineral resources of the International Sea-Bed area, at least the spirit and intent of the convention is to inspire all nations to adopt a posture of cooperation in order to derive the most benefits from the sea. Another concept that prevailed from the conference is to use the sea for peaceful purposes. Most nations now abhor the tradition that existed during the colonial era that the sea was used as a battle-ground. A third concept is adoption of a condominium arrangement in order to solve conflicting or overlapping claims. At least all the claimant states in the South China Sea have

signed the convention. Indonesia and the Philippines have already ratified it.

While Article 123 of the Convention mentions cooperation among bordering States in conservation, exploration and protection of living resources and the maritime environment, the Convention in many parts urges cooperation among states in navigation, shipping and communication. Whether the claimant states regard the waters in the South China Sea as internal, archipelagic, territorial or exclusive economic zone, the Convention is replete with provisions guaranteeing freedom of navigation, shipping and communication on the aforesaid regimes.

In the face of apparent conflicting claims on the area, the practical solution is the condominium concept. Condominium is generally understood as joint ownership. While retaining an undivided interest, the claimants can avail of the facilities of the whole area. Instead of unnecessarily entering into conflicts and dissipating energy and resources, the formation or creation of a condominium might be a solution to the problem.

Navigation, Shipping and Communication

Article 38 (2) of the Convention provides for the freedom of navigation and overflight on straits used for international navigation solely for the purpose of continuous and expeditious transit. Article 58 (1) of the Convention states that in the Exclusive Economic Zone all states enjoy the freedom of navigation and overflight, and of the laying of submarine cables and pipelines. It includes other international lawful uses of the

sea such as those associated with the operation of ships, aircraft, submarine cables and pipelines.

Innocent Passage

The right of innocent passage is guaranteed on the territorial sea (Article 12-17), archipelagic waters (Article 52) international waters enclosed by strait base lines (Article 8[2]; 25[2] and 211[3]). Likewise the right of innocent passage is assured on straits used for international navigation (Article 38).

To safeguard the innocent passage, the coastal state of a territorial sea may adopt laws and regulations in respect to the safety of navigation, protection of navigational aids and facilities and the protection of cables and pipelines (Art. 21), where necessary, having regard to the safety of navigation, the coastal state may require foreign ships exercising the right of innocent passage through the territorial sea to use sea lanes and traffic separation schemes. In particular, tankers, nuclear powered ships and ships carrying nuclear or other inherently dangerous or noxious substances may be required to confine their passage to such sea lanes (Article 21[1] and [2]).

Safeguards for Navigation and Shipping

The coastal state shall not hamper the innocent passage of foreign ships. In particular the coastal state shall not impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage. It may not discriminate in form and in fact against ships of any state

or against ships carrying cargo to, from or on behalf of any state. Moreover, the coastal state shall give appropriate publicity to any danger to navigation; of which it has knowledge within the territorial sea. (Art. 21[1] [a]; 22[1]; 41; 42[1] [a]).

On economic zones, coastal states are obliged to give due notice on the construction of artificial islands, installations or structures. A permanent means for giving warning of their presence must be maintained and installations or structures which are abandoned or disused shall be removed to assure safety of navigation taking into account any generally accepted international standards established by competent international organizations. The coastal state may establish reasonable safety zones around such artificial islands, installation and structures to ensure the safety both of navigation and of the artificial islands, installation and structures (Article 60 [3]).

In general, in the powers of enforcement against foreign vessels, States shall not endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage or expose the marine environment to an unreasonable risk (Article 225).

To further assure the freedom of navigation and shipping, States are obliged not to interfere in shipping routes. The development and use of any type of scientific research installations or equipment shall not constitute an obstacle to established shipping routes (Article 261).

Contemporary Cooperative Schemes

There are several cooperative schemes active in the South China Sea area. In the ship-

ping sector, ASEAN has formed the Federation of ASEAN Shippers Council with headquarters in Jakarta, and a Federation of Shipowners' Association established in 1975. An ASEAN Port Authority Association is also actively involved in maritime shipping.

Three ASEAN states (Indonesia, Malaysia, and Singapore) have jointly cooperated on measures dealing with maritime navigation in the Straits of Malacca/Singapore Straits which is the southwest entrance of the South China Sea. The three ASEAN states, in a 1977 agreement, provided among others: (a) an underkeel clearance requirement for vessels transiting the Straits; (b) traffic-separation schemes; (c) insurance and compensation schemes for tankers and other large vessels navigating the area; and (d) environmental pollution policy formulation.

There are a number of regional cooperative bodies active in the South China Sea area which, while dealing with marine issues, are only peripherally concerned with navigation, shipping, and communications. Several international bodies are also active in the region. Of these, the International Maritime Organization (IMO) of the United Nations would stand in the forefront as far as navigation and shipping is concerned. Another international body with principal interest in navigation is the International Hydrographic Organization (IHO). Among the other UN agencies, FAO (Food and Agricultural Organization), UNEP (United Nations Environmental Programme), UNESCO, and WMO (World Meteorological Organization) are all active in the region.

Cooperation among Riparian States

The subject of navigation/shipping/communication transcends national zones of

jurisdiction and is therefore an area of cooperation. All the ASEAN states are developing countries, and their economies could be enhanced by the extensive development and management of ship borne commerce and trade. All the ASEAN states have port facilities: Manila in the Philippines; Sattahip and Bangkok in Thailand; Singapore; Penang and Lahuan in Malaysia; Darussalam in Brunei, Lombok Strait in Indonesia is being developed as an alternative route for Ultra Large Crude Carriers (ULCCs) from the Indian Ocean to the Japanese ports and to those on the West Coast of the American Continent.

Distinctly aware of the potential benefits derived from increased international trade and commerce, all the ASEAN states have joined regional and international bodies and are active members of UNCTAD - The UN Conference on Trade and Development.

It is also noteworthy, that all the ASEAN states have signed or acceded to the 1982 Law of the Sea Convention. Two of these states Indonesia and the Philippines, have ratified the Convention. All six ASEAN states have thus indicated a desire or willingness for the establishment of "a new legal order for the seas and oceans which will facilitate international communication and will promote the peaceful uses of the seas and oceans ..." (see Preamble of the 1982 Law of the Sea Convention).

There are, however, several negative factors that influence cooperation among riparian states in the South China Sea. The foremost of these is that all these states are among those with developing economies. They therefore compete with each other in the development of their international trade and commerce and the rate of growth. To a large extent, their basic export products are

similar -- agriculture, forestry and even mining. Their industrial economies all need extensive development, thereby fostering competition for the lucrative Western markets. While all have market-oriented economies, differences in religion systems of government and educational or cultural backgrounds could have a profound effect on cooperation in the South China Sea.

Possibilities for Tension Reduction

ASEAN provides one of the best possibilities for tension reduction and confidence building among the bordering states in the South China Sea. Its primary mission of encouraging economic cooperation among its members, its proposed creation of a Zone of Peace, Freedom and Neutrality (ZOPFAN), all these could result in the reduction of tension in the area and perhaps pave the way for peaceful resolution of disagreements.

A sure-fire way of reducing tension or even conflicts in the South China Sea, is the conclusion of boundary delimitation agreements among adjacent or opposite states in the region. With the imminent entry-into-force of the LOSC, participating states are duty bound to define the extent of their ocean domain -- territorial sea, continental shelf, archipelagic waters, contiguous zones and their economic zones. The need to conclude agreements with their neighbours, where these ocean spaces overlap, is becoming more acute.

It is of course admitted that the resolution of boundary delimitation problems in the South China Sea is indeed a tough nut to crack. However, one possible solution is indicated in Art. 74, paragraph 3 (and Art. 83, paragraph 3), "pending agreement, the

states concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature" These provisional arrangements would cover a variety of subjects and issues and could possibly include joint development, resource sharing, delineation of responsibility, etc.

Another confidence building measure is that indicated in Training and Education. With adequate training and education in the ocean sciences, many bordering states could realize that their economies would profit considerably with increased navigational/shipping/communications facilities, that ecological considerations know no boundaries and that environmental pollution has

a deleterious effect on domestic or local waterways or ocean space.

Prospects for the 1990s

The 1982 Convention on the Law of the Sea has now been ratified by forty-two (42) states. Only 18 more are needed to attain the necessary 60 ratifications for its entry-into-force. When that happens, a new order in the seas and oceans would be in effect. This new order will entail new responsibilities and new opportunities for all states, especially coastal states. It will also mean new challenges for cooperation, sharing of resources and ocean utilization to the mutual benefit of all nations.

Internal Variables of Regional Conflicts in ASEAN's International Relations

Paridah ABD. SAMAD

Introduction

THE history of the ASEAN region since 1960 has had many examples of essentially internal problems having a serious impact on the international relations of the region. During the 1960s a number of problems left over from the colonial period dominated the region's international relations. In all cases these were exacerbated by precisely the kinds of domestic factors which this article is concerned with. Four such issues may be briefly mentioned.

Firstly, the most significant event which had profound consequences for all the states of the region, the Vietnam War, was essentially a civil war fought over the question of who was to succeed the French power in Indochina. It became a major international event because of foreign intervention, which was itself prompted in part by the failure of the South Vietnamese government to "build a nation" -- to develop effective mechanisms for political participation, national unity,

economic development and an orderly political succession.

Secondly, Indonesia's confrontation against Malaysia (like its confrontation with the Dutch over West Irian, now Irian Jaya) similarly stemmed from disputes about the post-colonial order but was also directly caused by certain factors relating to the Indonesian domestic situation of the kind that will be discussed here. These include President Soekarno's need to maintain an uneasy balance amongst various competing factions inside Indonesia: the army, the Indonesian Communist Party, and the nationalist and Islamic groupings; his need to divert attention from Indonesia's poor economic performance; his need to boost his own prestige, given the highly personalized nature of his rule and the lack of any obvious successor to him; and the existence of a sizeable and relatively wealthy Chinese minority which caused discontent amongst the indigenous population leading to periodic anti-Chinese riots. All these factors played a part in his decision to pursue an aggressive foreign po-

licy as a means of containing a potentially explosive domestic situation.

Thirdly, the separation of Singapore from Malaysia, which has significantly irritated the relationship between both countries, stemmed from domestic political conditions where the aspiration of Lee Kuan Yew to increase his power in Malaysia was a source of conflicts. At the beginning Lee Kuan Yew promised to observe and respect the special rights of the Malays in his bargain with the British when Singapore decided to join Malaysia. He went back on his word and started his campaign of "Malaysian-Malaysia" which meant Malaysia belonging to all Malaysians; in other words, the Chinese and Indian population should be given equal status and rights as the indigenous Malays. The outcome of such action was fresh racial troubles because the Peninsular Chinese population obviously sympathized with him and supported him. The desire to secure Malay political power led Tunku Abdul Rahman to giving independence to Singapore.

The political repercussions of this separation are still felt now, which is demonstrated by the interconnection of both countries' domestic political events. For instance, in the 1969 general election, several years after the Malaysia-Singapore split and at a period when the nation was experiencing intensified communist threat, the new Chinese opposition party, the Democratic Action Party (DAP), tried to champion the Chinese cause by reviving the "Malaysian-Malaysia" concept in order to expand its influence among the Chinese community. The Singapore government was found to be involved in the formation of the DAP.¹

Fourthly, in the Philippines, the need to be recognized as a prominent nationalist leader fighting for national interests, the need to divert the attention of the people from the government's failure to solve the problem of the rural and urban poor and the need for an issue that could be exploited for narrow political interests in the context of the forthcoming presidential election; all these strongly influenced the intensification of the Philippines under the Macapagal government's claim on Sabah. President Macapagal presented the first official claim to the British Government in June 1961, after more than ten years of Philippine independence. The creation of Malaysia in 1963, which included Sabah, was not recognized by the Philippines and its diplomatic relations with Malaysia were suspended.

Furthermore, the issue of Sabah, which dominated the relationship between Malaysia and the Philippines in the 1960s, continued to be determined by domestic factors. For instance, the change of leadership in 1966 affected Philippine policy towards Malaysia. When Macapagal was succeeded by F. Marcos in 1966, and President Soekarno was also removed from power in Indonesia at that time, the region's international relations seemed to be a new political environment. President Marcos recognized the new Federation of Malaysia in 1966, and both sides agreed in a Joint Communiqué to clarify the claim and discuss the means of a settlement. ASEAN was created the following year. However, the claim has not only made the regional organization of Association of Southeast Asia (ASA) fall victim to the bilateral hostilities of two of its three member states, but ASEAN which has so far been successful in subduing the effects of the conflict, has failed to contribute any new

¹T.A. Rahman Putra, *Challenging Times* (Petaling Jaya: Pelanduk Publications, 1986), p. 61.

endeavours to the process of settlement. This is because the importance of Sabah to the Philippines is obviously more than a mere legal claim. Until now, the claim to Sabah has been much more dependent on the consequences of the opposition of the Muslim population in the southern part of the Philippines to the central government and the involvement of certain Malaysian Islamic movements in the conflict.

Notwithstanding the continuing Sabah issue, the region has been generally stable since the end of the Vietnam War. In particular there has been an apparent improvement in bilateral contacts between ASEAN states. This determined a number of factors including economic growth through the 1970s, the states' concentration on their national economic development, and the states' common fear of Vietnam and China. However, despite ASEAN's undeniable success in international forums, after a little over twenty years, the momentum for co-operation within ASEAN shows signs of decline. The reasons for this apparent decline in regional enthusiasm, whether temporary or not, are influenced by the domestic variables that have contributed to various conflicts in the region's international relations. However, the continuation of lingering bilateral problems among ASEAN states has not torn the organization apart nor has it led to open conflict.

Prevailing disagreement among the ASEAN member states are too numerous to be comprehensively enumerated. Admittedly, most of them are minor issues, many of them have been simmering for years, and others have been settled, if only temporarily. At the early stage, territorial and border disputes were the greatest source of disruption to the region's international relations.

Territorial rights were the very essence of statehood of the newly independent states of ASEAN. The contemporary reasons for the recurrence of territorial and border disputes in the region can be related to the consequences of communal division and dissension, the competition for scarce resources, the leaders' competition for power and influence and the maintenance of national pride. All these have interrelated consequences and have been the ingredients in the regional conflicts.

The major causes for communal dissension within ASEAN are Muslim-minorities and the role of the Chinese. The unsolved Muslim problem in the Philippines and Thailand has grown to become the problem of neighbouring Muslim countries as well. Internal conflicts in the Philippines and Thailand have not only created refugee problems but the secessionists will never cease their efforts to get support from these countries. The Muslim-minorities issue has arisen in Buddhist Thailand and the Catholic Philippines where the significance of the conflicts in irritating both countries' relationship with Malaysia is great. Malaysia has been accused of interfering in their domestic affairs by backing these dissenting groups.

Muslim Minorities

Malaysia had been implicated in the Muslim conflicts in the Philippines since the beginning, rendering military training and support through Sabah's former Chief Minister Tun Mustapha. Thousands of guerrillas had allegedly been trained in camps on a Malaysian island off Sabah. In October 1980, Philippine Admiral Romulo Espaldo claimed that Malaysia was tolerating seces-

sionist Moro training camps in Sabah. Other government officials repeated the charge of a supply base. In November 1981, Philippine Defence Minister Juan Ponce Enrile referred to "anti-government activities" in Sabah, primarily of the Philippine Democratic Socialist Party, which was using the state as a "southern backdoor," commuting between Sulu and Sabah. In April 1982, a television documentary was aired in Australia which claimed that British and Australia mercenaries were training Filipino Muslim guerrillas in Malaysian jungle Camps and were financed by the Libyan leader, Muammar Gaddafi.²

The Malaysian government has denied its involvement in supporting Muslim dissension in the Philippines but is aware of the involvement of certain Islamic groups in Malaysia in the conflicts and has not taken any serious action to prevent these groups from supporting MORO causes in the Philippines. If it did so the ruling party would be accused of being unIslamic as the Islamic image of the government is important for maintaining its influence and power in the country. Islamic conscience in Malaysia is very strong. Thus being adjacent to the affected regions, the Islamic communities in Malaysia have protectively embraced the interests of their Filipino brethren who have been the victims of the central government's discrimination and oppressive policies.

The connection between the Malaysian Muslim movements and the Philippine Muslim dissenting groups has been a basic stumbling block preventing the Philippine government from dropping its claim to Sa-

bah. Besides the claim to Sabah has been used as a counter-attack to the involvement of Malaysia in its internal conflict, since Manila was believed to have played an important role in helping the victory of the Christian government of Parti Bersatu Sabah under the leadership of Pairin Kitingan in Sabah's general election in 1985. The other counter-attack to the Malaysian government can be linked to the Philippine co-operation with the present Sabah government in importing Filipino Christians to Sabah in order to counterbalance the presence of the Filipino Muslim refugees.

The immigrants who come from nearby areas of the Philippines and Indonesia -- some seeking a safe haven from conflict, have shifted Sabah's already complicated ethnic mix, weighing heavily in favour of the Muslim of Filipino origin, instead of the Christian Kadazans who govern the state today, or the Chinese who control its economy. Thus the Parti Bersatu Sabah has tried to counterbalance the flow by allowing easier entry for labourers from the mostly Christian Nusatenggara region of southeast Indonesia and house maids from the northern Philippines. The importation of Muslim immigrants under two previous Muslim governments of Sabah and the importation of Christian immigrants under the present Christian government are with the aim of enlarging their pool of potential voters. These immigrants quickly acquired blue national identity cards hence recognising them as full Malaysian citizens.³

As long as Mindanao's Muslims and the Moro National Liberation Front oppose the government policies, whether officially sanc-

²Hans H. Indorf, *Impediment to Regionalism in Southeast Asia: Bilateral Constraints Among ASEAN Member States* (Singapore: ISEAS, 1984), p. 26.

³ Far Eastern Economic Review, 16 March 1989, pp. 24 and 25.

tioned or not, Sabah will remain an important regional issue acting as and irritating factor in the Philippines-Malaysia relationship. The pattern of this relationship appears to be the most deep-seated if compared to others among the ASEAN community. The importance of the issue at any particular time will be determined by other domestic factors. Currently, Manila's preoccupation with the communist threat, the deterioration of its economic situation and the crisis of the military fragmentation, have relegated any attention to the Sabah claim to secondary importance.

The worsening relationship between Malaysia and Thailand has also stemmed from the consequence of domestic political circumstances. It is Thai Muslims turning refugees and support from neighbouring countries that have unavoidably brought the involvement of certain sectors of Malaysian Islamic communities in the internal conflicts in the southern part of Thailand.

The four southern Thai provinces of Satun, Pattani, Yala and Narathiwat, bordering Malaysia, have eighty per cent Muslim population. Their opposition to the central government has resulted from the government's neglect, discrimination and mistreatment economically, socially and religiously. In response, major secessionist groups have emerged, including an estimated 1,000 guerrillas. Since the Thai Muslims are of Malay ethnic stock, speak Malay and have close personal bonds with Malaysian relatives, unavoidably the involvement of Malaysia in supporting their causes is more apparent. Although there is no serious open conflict between both countries, a major suppression campaign which was planned by Thai authorities in co-operation with the

CPM against southern Muslim separatists in March and April 1981, was seen as a Thai counter to Malaysian involvement in its domestic conflict. More than 1,000 villagers, fearing that they would become innocent victims in the fighting, sought sanctuary in Malaysia.⁴

The Thai military has undertaken some vigorous counter-insurgency measures without, however, seriously decimating the substance of the communist force. An obvious reason is that the CPM does not go out of its way to attack Thai troops as its party's enemy is Malaysia, not Thailand. More Thais especially of Chinese origin have joined the CPM because of the lack of consistently strong pressure from the Thai side. The CPM has operated in the jungles of southern Thailand for the past 25 years, collecting protection money from residents and conducting occasional skirmishes into Malaysian territory. Thailand has also been a place for the CPM to process drugs and then smuggle them to finance its activities. Thus the combination of the causes of the two dissenting groups in the two neighbouring countries has disturbing implications for the region's international relations.

The Ethnic Chinese Role and Dominance

Besides Muslim minorities, the other major cause of communally based dissension within ASEAN is the role of the Chinese. The issue focuses upon Singapore which, with almost two million Chinese, has to bear the brunt of intra-ASEAN ethnic critiques

⁴Bangkok Radio Domestic Service, in *Foreign Broadcast Information Service (FBIS)* IV, 14 April 1982, p. 4.

because of its economic success, the maintenance of its Chinese identity and ideology, its efforts to make Confucianism as the nation's political ideology instead of considering other races' ideological interests and its sympathy to Chinese causes in neighbouring countries especially Malaysia.

Because of geography, proximity and historical circumstances, Singapore's relations with Malaysia are apt to be most intense and, therefore, most subject to aggravation. Communal circumstances have been the most important source of friction between the two countries. Communal circumstances that have caused a suspicious relationship between both countries can be related to the link of Singapore's ruling government party with the Malaysian Chinese opposition party of DAP, the Singapore government's good relationship with Israel, which is widely believed in Malaysia to have been developed with the purpose of harming the sensitive feeling of the Malay Muslims, Singapore's sympathy with the Chinese cause in the Peninsular, the discrimination policies against Malay Singaporeans in relation to economic and political opportunities, the increasing numbers of Malay Singaporeans applying for Malaysian citizenship and so forth.

The other domestic variable that has further irritated the relationship between both countries stems from the strong Islamic conscience among Malay-Muslims in the Peninsular. The Islamic resurgence has a great deal to do with ethnic question in competition with the Chinese. As an essential part of Malay ethnic identity, Islam is bound to have communal ramifications.

The strength of Islam in Malaysia is matched by the significance of Singapore's

political ideology of Confucianism. Instead of adhering to Lee Kuan Yew's slogan when he fought for independence that the country should belong to all races and maintain its cosmopolitan way of life, the maintenance of this ideology means the maintenance of the Chinese political, social and religious roots. The pride of being Chinese has caused accusations that Singapore is a third Chinese country.

Other issues that have increased the already existing tension in the relationship between Singapore and her neighbouring countries, Malaysia and Indonesia, include the expansion of its armed forces (SAF), the questioning of the role of the Malays in the SAF followed by their replacement with the Chinese, the unsettled claim on Batu Putih Island between Singapore and Malaysia, and the straying activities of Singaporean soldiers in Johore.

Singapore has long perceived Malaysia and Indonesia as a threat to its future survival. On the assumption that it may have to fight its Malay neighbours in Malaysia and Indonesia, since independence, Singapore has built up its armed forces. The high ethnic Chinese profile of the Singapore army arose as a reaction to the situation in 1965, when the newly independent republic found itself with a small and predominantly Malay army and police force, with a disproportion number of Indians at official levels. This was a result both of British policy -- which had built up a Malay force to fight a mostly Chinese -- inspired communist insurgency in Malaya in the 1950s and 1960s, and of the traditional Chinese view that an army career was a lowly one. The fact that Indonesia had engaged in a "Konfrontasi" policy to "crush" Malaysia and Singapore in the 1960s until the New Order became esta-

blished in Indonesia under President Soeharto, also added to Singapore's suspicions of its biggest Malay neighbour. Singapore's air force was built up such that currently Singapore has more combat aircraft than both Indonesia and Malaysia combined. Singapore also built up permanent army training facilities in Taiwan, prompting some politicians in neighbouring Malay countries to brand Singapore a third China.⁵

In February 1987, Lee Hsien Loong, Singapore's Defence Minister, caused widespread controversy in Malaysia and to a lesser extent in Indonesia, when he questioned the role of the Malays in the Singapore Armed Forces (SAF). He said that the Malays in the SAF would be in a difficult position in defending the homeland, where their emotions for the nation may come into conflict with their emotions for their religion. Malaysian suspicions on Singapore increased when in October 1987, when racial tension in Malaysia reached a new height, four Singaporean soldiers were caught strayed into Johore's rivers. On another occasion, Singaporean "tourists" visiting Malaysia on a few buses were later identified to be Singaporean soldiers. These acts were considered by the Malaysian government as an indication of Singapore's intention to interfere in its internal affairs in order to protect the Chinese cause in the Peninsular.⁶

The lingering territorial claim on Batu Putih Island between Malaysia and Singapore further adds irritation to the relationship between the two countries. The status of this island which is the entry point to Singapore

from the south was not specified during the boundary agreement made by the British Government in 1924. As a result after several negotiations between the two countries the status of ownership of this island is still unresolved.

The other internal factor that has significance in affecting the regional system can be linked to China's connection with the communist movements and its racial connection with the Chinese population in the regional states. Racial conflicts in Malaysia offer a major opportunity for Chinese interference in Malaysian internal affairs either through the CPM, the government opposition parties, or Chinese nationalists. China is in an advantageous position to expand its influence in Malaysia due to the emotional and cultural ties between China and the 4.8 million Malaysian citizens of Chinese descent. However, the expansion of China's influence in Malaysia is dependent on the seriousness of the problem of national fragmentation between the Malays and the Chinese.

The racial tension between the Malays and the Chinese is serious. Any foreign backing to the Chinese cause in Malaysia is expected to threaten the political power of the Malays. China's sympathy for the Chinese cause in Malaysia is also demonstrated by its policies towards the overseas Chinese and its economic policies towards Malaysian businessmen. For one thing, while Malaysian passports rule out visits to China, and those wishing to visit this country must obtain special permission from immigration authorities, China is reported to be issuing special travel documents to Chinese living abroad to attract tourists and foreign exchange. Malaysian authorities have feared that Malaysians visiting China

⁵*Far Eastern Economic Review*, 13 April 1989, p. 29.

⁶Author's discussion with personnels from the Malaysian Ministry of Defence, Kuala Lumpur.

would be influenced by the communists there, and work against the government. For another, China has given preferential treatment and opportunities to Chinese Malaysian businessmen compared with the non-Chinese Malaysian businessmen. Since the international trade between both countries is quite important, such treatments have partly reduced the opportunities of the Malay businessmen in international trade activities.⁷

Besides the racial connection between China and the Malaysian Chinese population, another factor that has strained the relationship between both countries is the continuation of communist exploitation of communal issues through government opposition parties in order to increase communal unrest. The CPM is supported by China in the context of party to party relations. The critical political situation as a result of communal unrest would provide better opportunities for the communist or other party that has communist connection to seize power in the country.

Communal conflicts in Malaysia also have an important significance in creating communal divisions at the level of the regional system. The Chinese causes are supported not only by China but also by Thailand. This is demonstrated by Thailand's co-operation with the CPM to counter the involvement of Malaysia in its internal conflict in the southern part. On the other hand, the Malays causes are supported by Indonesia, a big brother of Malay-Malaysia and by Vietnam who already has a dissenting relationship with China and Thailand in her competition of influence in Cambodia. Indonesia

and Vietnam particularly regard China as a political threat and share a distrust of this country.

Besides the irritations in the relationship between China and Malaysia deriving from communal circumstances, economic circumstances have also been important. One sore point in Malaysia-China relations is rooted in claims to the offshore islands in the South China sea. Malaysia, as well as some other Southeast Asian countries, have staked ownership rights over the island-atoll groups which the PRC maintains are its possession. Malaysia's interest in the Spratlys is restricted to two islands, Amboyna Bay and Terumbu Layang Layang. These islands are of great economic significance to Malaysia. The vicinity around Terumbu Layang Layang is presently explored by Kuala Lumpur for oil and gas. Because of its immense economic value to Malaysia, the government has taken measures to protect the area.

The Spratlys are claimed and now occupied in varying degrees by forces of China, Taiwan, Malaysia, the Philippines and Vietnam. However, potential oil is but one factor in the disputes. The Spratlys are also considered strategic as bases for sea-lane defence, interdiction, surveillance and possibly for launching of land attacks. The national security interests of Japan, the United States and the Soviet Union are involved.⁸ Although serious conflicts over the islands have so far been avoided, it is easy to see that they could provide a pretext for a major intra-regional confrontation should tension over communal or other domestic issues escalate.

The significance of communal divisions

⁷For further information, please refer to: *Asian Survey*, No. 10 (October 1987), p. 1111. *I.T.H.*, 5 March 1985. *Far Eastern Economic Review*, 12 December 1985, p. 47. *Ibid.*, 5 December 1985, p. 29.

⁸*The Pacific Review*, Vol. 1, Number 4, 1988, p. 438.

in the regional system for international relations can be linked to the implications of Chinese and Soviet rivalry in the region. In any critical political disturbance in Malaysia, it is expected that China may feel a need to stoke the fires so as to prevent others from gaining control.

Influence of Major Powers

Although the Soviet Union is not presently considered by the Malaysian government to be a major threat to its security, the repercussions of an increased interest by this superpower in the country's internal affairs cannot be dismissed. The Soviet threat emanates not only from its hostile communist ideology but also from its activities in espionage where it has targetted some Malay intellectuals who are not satisfied with the western free enterprise economic system and prefer the adoption of a socialist economic system as a system that can help the economic position of the Malays.⁹

The Soviet strategy of penetrating the local intelligentsia, middle class professionals, and functional groups inside and outside the government, has the ultimate objective of influencing their internal and external policies in a direction favourable to the expansion of Soviet interests in the region. However, the consequence of the competition of influence between China and the Soviet Union in the Malaysian political scene for the international system is much more dependent on the ability of the Malaysian

government to keep its racial problem in check and also to maintain its economic growth.

The other major cause of political disension within ASEAN states is derived from the internal economic circumstances of these countries. In the Philippines, an increased communist influence is linked to the inability of the Philippine government to overcome its economic problems. The economic difficulties which have significantly increased the incidence of political unrest among workers, farmers, the military and the Muslims have provided better opportunities for the communists to exploit the situation. The expansion of communist influence combined with the Soviet connection has increased concern in the United States with the political development of the country as its military presence in the country, which is important to its security and economic interests, has come under threat.

In order to maintain the presence of its military facilities, which are crucial for the protection of the American economic and political interests at regional and global levels, the deep concern of the United States' government over the political succession of the country is visible. In fact, because of his support for the presence of its military bases, the United States had to support the corrupt and dictatorial regime of Marcos without considering its significance for the destruction of the political and economic system of the country. In the 1986 events the United States government supported the democratic opposition led by Cory Aquino after realising the weakening of Marcos' power. The United States' influence in the present government has helped to prevent further increasing Soviet influence in the country.

⁹For further information, please refer to: *Asian Survey*, Ibid., p. 1086. *Far Eastern Economic Review*, 17 July 1981, p. 6 and 24 July 1981, pp. 9 and 10.

While the presence of American military bases in the Philippines has contributed to Philippine economic development and helped to stabilize the succession system of the country, it has also contributed to maintaining the regional system since the American presence has functioned to counter-balance the influence of the Soviet Union. In fact, most ASEAN leaders agree that the presence of the bases is important for the security and economic interests of the region.

Singapore's recent offer to the United States to formalise its *de facto* security relationship with that major power and permit the basing of permanent United States forces in the country, however, continues to send ripples throughout ASEAN and beyond. Within ASEAN, reactions range outright opposition, through ambivalence to studied neutrality, and threaten to stretch the delicate fabric of group unity. The United States' response to Singapore's advance, while formally non-committal, is to delink the issue with the Philippine bases. Although there should be no problem as far as ASEAN states are concerned if the offer were simply an upgrading of existing Singapore-United States security arrangements that give the US Navy and Air Force repair and staging rights, privately, government officials are concerned that the issues may split ASEAN.

Malaysia has expressed the most vocal response to Singapore's offer among ASEAN members, calling upon Singapore to respect the feelings and views of other ASEAN members. If Singapore did intend to permit US bases, it would mean that the Republic, as one of the partners of ASEAN, has violated the 1971 KL Declaration which gave birth to the ZOPFAN idea (Zone of Peace, Freedom and Neutrality).

Economic Difficulties

The inability of the present Philippine government to overcome the crisis caused by its economic deterioration is a disturbing domestic variable of regional and international order. Besides its significance in expanding communist influence, it has helped the expansion of Soviet influence in the country by the mushrooming of the pro-nationalist and anti-imperialist groups who are fighting for economic independence and searching for a genuine national identity. In the process of searching for a genuine national identity, these groups have turned to the Soviet Union, which is United States' competitor. The economic difficulties have also led the poorest or other discontented groups to increase their activities of piracy by using terrorist tactics across boundaries and international waters and drug trafficking. The repercussions of such activities on the neighbouring countries' internal law and order are great and they provide an additional potential source of regional conflict.

Internal economic circumstances have played an important role in aggravating the relationship between Thailand and Singapore in recent times. Relations between both countries took a buffeting as Thai navalships, special trains, and buses raced against the clock to remove from the island republic 10,000 Thai illegal workers before 31 March 1989. Singapore's Immigration Act was amended in January to punish those illegal workers who overstayed their deadline. This incident made Thai officials privately unhappy about a fellow ASEAN nation being so unfriendly. The bitterness of the relationship between both nations can be demonstrated by the official statement of the Thai Prime Minister Chatichai Choonhavan that

Thailand should send warships to Singapore instead of sending ships. One popular theory in Bangkok is that the Singapore government overlooked the presence of these workers when it desperately needed labour to complete several big construction projects, but now that there was no further use for them, they made the law so harsh that it prompted the exodus.¹⁰

Although economic issues have been a major reason for the ASEAN states' simmering disagreement and the communal and religious dimensions have aggravated the conflicts, economic difficulties experienced by its members who have some common economic interests as a result of being developing countries help ASEAN to function as an effective organization of regional economic cooperation. Through the organization of ASEAN, the member countries could find some solutions to their economic difficulties effected by world fluctuation, protectionist policies, and the exploitation of the World Bank and the IMF.

Conclusion

Perhaps the only determinant that have actually helped regional cohesion are the regional states' opposition to communism and the stabilization of their succession system. The stabilization of the succession system in the regional states, either by one-party government and coalition governments monopolizing the political system, or by stabilizing the system of dictatorship and prolong-

ing military rule provided that these governments have maintained some of western democratic values, has helped regional cohesion. But should the ethnic or religious extremists or nationalists gain influence over some governmental decisions, the effect on regional co-operation could be destabilizing. Cohesion within the region has also been assisted by the fact that opposition to communism has provided a source of unity amongst ASEAN leaders.

Although ASEAN has been eminently successful in projecting an image of an effective regional economic organization, and anti-communist regional cohesion, the complications arising from numerous disagreements among its members has escalated regional tensions and its political repercussions for the international system are potentially great. Hence, the future prospects of the region are far from clear. On the other hand, Southeast Asia has not experienced in the 1970s and 1980s conflicts of the seriousness of the Vietnam War or Indonesian confrontation. On the other, as this thesis has sought to demonstrate, there is a considerable potential for essential domestic factors spilling over into the international arena and leading to damaging regional conflicts, with possible superpower involvement. Whether they do so, and the region becomes once again one of the world's major trouble spots is less dependent on external factors than on the extent to which the region's leaders succeed in resolving or at least containing domestic disorder arising from the five main aspects that have been considered here.

¹⁰*Far Eastern Economic Review*, 13 April 1989, p. 28.

Book Reviews

Indonesians of Chinese Origin

Indonesians of Chinese Origin: Assimilation and the Goal of 'One Nation, One People' by Stuart W. Greif. New York, N.Y.: Professors World Peace Academy. The following reviews, written by respectively H. Junus Jahya, Director of Institute Studies on Assimilation Issues. (*Lembaga Pengkajian Masalah Pembauran*) and M. Ridwan Saidi, Former Members of House Representative, are translated from the original texts.

H. Junus Jahya

THIS book consists of only 74 pages, but it is very illustrative for anyone who wants to have a rapid overview of the assimilation process of the ethnic Chinese in Indonesia and the still remaining problems. The book is entitled *Indonesians of Chinese Origin* or put more briefly: "WNI" with the subtitle *Assimilation and the Goal of 'One Nation, One People.'*

The author was born in the USA in 1943 and graduated from Berkeley University in 1968. Then he went to New Zealand and currently teaches Politics at a University there. In 1980 Prof. Greif had a curious experience. In Sanur, Bali, he met a "Chinese" who did not speak Chinese at all. It turned out that the 40 year old man was an "Indonesian Chinese." And what is more, this person had a Sanskrit-Javanese name. His wife was an indigenous woman from Toraja, South Sulawesi. His children did not look Chinese. He himself had in fact a Javanese mother. Also from the cultural point of view there was no trace of Chinese characteristic among his children. Yet, based on the Indonesian Law, which is a legacy of Dutch Law, they were considered Chinese.

The experience encouraged the author to write a book on *Indonesians of Chinese Origin*, as he has done on the overseas Chinese in New Zealand and the Fiji Islands. Books available in English on this matter are quite good, according to professor Greif. However, there is a flaw in them in that the

“human interest” is lacking. Thus this book on “WNI” (Warga Negara Indonesia = Indonesian citizen of Chinese Origin) appeared in 1985, which is different from the previous works written by experts on this subject. This is due to the fact that “the basic material” is not drawn only from the library, but from field research (44 pp.). This consists of interviews with 25 WNIs (16 males, 9 females) in Java and Bali, within the age bracket of 23-58 years, namely in Jakarta 10, Yogya 4, Denpasar 3, Bogor 2 and Solo 2. In my opinion the samplings are sufficiently representative though the other islands have not been covered.

Professor Greif begins his book with an elaboration of the related historical, socio-cultural and economic backgrounds as is usually the case with other similar books. Hence it does not seem necessary to discuss this aspect, except some small remarks at the conclusion of this book. However, what is most important are the conclusions of the 25 case studies concluded in the chapter on “Conclusions and Suggestions.”

About 25 years ago, the ethnic Chinese, both Indonesian (WNI) and Foreign Citizens (WNA), *totoks* (full-blooded) and *peranakan* (mixed) suddenly had to face a disaster. BAPERKI prominent figures were under suspicion of being involved in the 1965 PKI's (*Partai Komunis Indonesia* = Indonesian Communist Party) September 30th Movement (*Gerakan 30 September*). BAPERKI was an acronym for *Badan Permusyawaratan Kewarganegaraan Indonesia* = Consultative Body for Indonesian Citizenship, set up in 1954, which gradually became a mass organisation participating in the General Elections as a contestant and a political party in its own right. On account of its large mem-

bership (it had once reached 1/4 million), almost 100% ethnic Chinese, its leaders were always vocal as though “representing” the ethnic Chinese here. On the other hand, most of the members were in fact just being “passive,” since they were only attracted by the BAPERKI's social and educational activities. The leftist behaviour of the BAPERKI figures proved to drive all ethnic Chinese in Indonesia into a corner, including also the non-members of this exclusively-racist organisation.

Prof. Greif is of the opinion that the Indonesian people are praiseworthy for their great tolerance. The military and civilians who initiated the establishment of the New Order were not in the least “tempted” to look for a “short cut,” as was the case with the barbaric manner of the Vietnamese communists 10 years later in settling their “Chinese problem.” In implementing economic development the New Order in Indonesia has even made the ethnic Chinese its “assistants.” As some sort of compensation, sources of inspiration and manifestation of Chinese identity in Indonesia were contained. There were no more Chinese schools, newspapers and literature. Speaking Chinese was discouraged and *toapekong* (idol) procession in public was prohibited. Meanwhile changing Chinese names into Indonesian ones was encouraged. In the economic field, they were also encouraged to actively engage the indigenous people in their business. The government has indeed adopted the assimilation policy with regard to the ethnic Chinese so that they will no longer become an exclusive group, let alone a new Chinese ethnic group as desired by BAPERKI, PKI and their comrades. They are currently being directed to becoming real “Indonesians” in keeping with the motto of One

Fatherland, One Nation.

In spite of many sacrifices, for these last 20 years the assimilation process has made rapid headway and its positive results have been felt; it has been supported by the younger generation. Its trend is indeed going towards the extinction of the Chinese language here. Those who are under the age bracket of 40 years no longer understand the language. The Indonesian language is used everywhere. Intermarriages also occur, either between *totoks* and *peranakans* or between *peranakans* and the indigenous group. With the increasingly predominant indigenous faces and the changing of Chinese names into Indonesian ones in the future, within a short time it will be difficult to distinguish Indonesians one from another, except when the person concerned voluntarily admits that he/she is of Chinese origin. This will especially happen in big cities.

Another impact of the assimilation process is the extinction of Chinese customs and beliefs to be replaced by new identities. In this respect the Christian communities especially Catholics have played a very substantial role. It is through conversion to these religions that the people concerned discard their Chinese identity and aim at the Indonesian one. Only in the educational field do they expect the government to abolish unofficial obstacles so as to enable them to enroll at state universities in a normal manner. However, by and large the problem of ethnic descent does seem to be very disturbing.

As to the WNAs (foreign citizens) totalling about 550,000 people, they all agreed to become Indonesian citizens (WNI). These WNAs are "victims" of their parents' improper choice. Their stand differs widely from their parents'. Only a few of them were

born and educated outside Indonesia. Doesn't it stand to reason if one acquires one's citizenship in the country where one was born? Also in facing the PRC it would be more advisable if they are Indonesian citizens so that the PRC or Taiwan or any other third countries do not have any jurisdiction or get a grip on them. As regards relations with the PRC, these people support Indonesia's cautious attitude with regard to normalisation of diplomatic relations with that country. The view expressed by a 46 year old Indonesian of Chinese origin from Bogor (pp. 44-45) is worth noting. He said that as long as the PRC's Embassy does not meddle in Indonesia's internal affairs and does not give support to certain groups, it would make no difference. Hopefully Communist China has learned something during these last 20 years. The man from Bogor felt first and foremost as an Indonesian. The most appropriate way to jeopardize the position of the ethnic Chinese is "to identify with China in any way"! For the indigenous people monitor one another very carefully. China, he says, no longer has the image it had 20 years ago. That country is weak in every way and the communist ideology is no longer successful. (The more so after the Tienanmen tragedy and the downfall of communism in Eastern Europe lately). Hence based on those 25 case studies, the fear that the ethnic Chinese are potential conspirators of Peking is absolutely unfounded.

In time the existence of law against anything that smacks of SARA (*suku, agama, ras, dan antar golongan* = matters pertaining to ethnic, religious, and racial relations), should be considered. It should be kept in mind that anti-Chinese riots are precisely provoked to attack the government. There

are anti-Chinese riots which are based on political motivation, there are also riots inspired by poverty among the common people. Racism instigated by political motivation is horrible, the latter (caused by poverty because the ethnic Chinese is a symbol of wealth) is accepted with understanding and resignation. However, it is generally felt that explosions of anti-Chinese riots are not based on hatred against any particular ethnic group. And it also appears that the relationship between the indigenous (*pribumi*) and non-indigenous (*non-pribumi*) groups is in fact improving. In general, there is some kind of optimism about the future of both the *pri-nonpri* relationship and the economic prospect. Nevertheless efforts should also be made to abolish racism. Pancasila implicitly rejects racism. However, for those who are not "sophisticated" enough, a very clear and explicit explanation is called for.

The writer -- although only recently involved in this matter -- has been able to make a very good exposition on the ethnic Chinese group based on library research, notwithstanding a few inaccuracies here and there such as on bazaar Malay, which he refers to as Malay bazaar (p. 3). He writes further that the PTI (*Partai Tionghoa Indonesia* = Indonesian Chinese Party) was established by "radical students" (p. 5), whereas its chairman Liem Koen Hian was a journalist and the vice-chairman was Mr. Ko Kwat Tiong, an advocate. Apparently not many "students" were involved in it. As regards the PTI, the other day I met Mr. Tjoa Tjie Liang (Anang S.) who used to be PTI's secretary. He said that dr. Soetomo and dr. Tjipto Mangunkusumo did not object to ethnic Chinese becoming full members of national movements. Parada Harahap and Thamrin did. However, Thamrin's argu-

ment in this regard was understandable. He contended that even with indigenous members only the national movements were already suspected by the Dutch, let alone with ethnic Chinese members. And as regards BAKOM (p. 18), despite so many friends at CSIS to consult with, Prof. Greif still makes a "traditional" mistake by referring to BAKOM-PKB (*Badan Komunikasi Penghayatan Kesatuan Bangsa* - Communication Body for the Appreciation of National Unity) as "a largely Chinese organization" whereas actually it is a semi-government consultative body. Since its establishment in 1977 by 4 *pri*s and 5 *non-pri*s, BAKOM has had no normal membership. There is only an executive board with a mixed composition comprising usually fifty-fifty *pri-non-pri* members.

This book infers that what the ethnic Chinese are so apprehensive about the Muslims especially the fundamentalists, and about poverty with its anti-Chinese aspect. It is obvious that the 25 people being interviewed were lacking in knowledge about Islam. Prof. Greif has too easily drawn the conclusion as though the ethnic Chinese were not attracted to Islam, a religion which has existed for more than a thousand years in China itself. And now it is becoming "popular" among scholars, the younger generation and businessmen of the ethnic Chinese group here. Indeed, the assimilation process makes great headway as mentioned earlier by the author, including in the field of religion. The ethnic Chinese are no longer "monopolized" by certain religions. There are more choices to make. Now they are turning not only to Catholicism and Protestantism, but to the Islamic religion as well.

The author holds that in 1985 (when he

wrote his book on "WNI") the literature before this had been out of date, because the situation in Indonesia seems to be subjected to rapid changes. Hence the book itself -- which may soon be widely read -- will also be outdated shortly afterwards. One may emphasize that with regard to "the ethnic Chinese problem" situation changes are happening quickly, suddenly and very often "shockingly," such as in the economic field ever since the government took deregulation measures a few years ago.

Since one can no longer rely on oil and natural gas as Indonesia's "engine" of growth, another alternative is called for. To be precise, the private sector has to be capable of functioning as the new engine of growth. If it does not work, our economy will be jeopardised. However, who is actually the private sector in Indonesia? It is none other than the ethnic Chinese, either WNI (Indonesian citizens) or WNA (foreign citizens), *Totoks* or *Peranakans* who are very much orientated towards Indonesia. Apparently these ethnic Chinese are not as yet "acceptable" to the people at large. The deregulation and debureaucratisation measures which have provided the private sector with various financial-economic facilities and opportunities have enabled it to fare very well in accordance with the government's target in economic development. However, at the same time the gap between the rich and the poor has become wider (which is parallel to that of racial difference). This is a very serious dilemma. In economic terms a country may make headway, but socio-politically the situation will be very critical. By refraining from using the private sector (read: the ethnic Chinese), the economy will be in a grave situation. However,

though the future economic difficulties will be surmounted, immense social upheavals may loom ahead. In fact, efforts should have been made long time ago in orienting the indigenous people towards increasingly accepting the ethnic Chinese WNI as "our people." The assimilation policy adopted does not seem to go effectively in this direction. To minimize social jealousy the people concerned are often warned not to display their wealth. However, one often forgets that the "display of wealth" (large-scale advertisements, big parties, expensive houses/cars and the like) is also considered as a "trade mark" of our *Taipans* (a very wealthy Chinese). This is inherent in any large-scale business in order to come out as successful competitor. Hence one should not expect that those Indonesian *Taipan's* will reduce their display of wealth.

To overcome the "obstacles" mentioned above, new breakthroughs are called for. However, before one could deal with this problem, the situation is compounded by the issue on "conglomerates" with regard to the "go public" of the companies of the Indonesian *taipans* which resulted in the accumulation of wealth in the hands of a few. Something that a still idealist ethnic Chinese economic analyst has feared. For after having "gone public," "go abroad" may follow -- if something goes wrong here -- and they might as well say to us: "go to hell!". Perhaps Prof. Greif or his students in New Zealand would like to continue the study on this phase, which is quite gripping the nonpris with apprehension, those who would never dream of becoming *taipans* themselves, because they earn their living just barely enough to live on like most of the indigenous citizens.

H. Ridwan Saidi

U P till now quite a number of books and research findings on assimilation have been published. The views of the elite group have often been voiced also. However, in many instances those publications have not as yet wholly reflected the perception of the subjects of assimilation. On the contrary, some of the publications on assimilation have even represented biased views of those elites concerned. The undercurrents of aspiration are also not easy to grasp since usually upgrading forums on the subjects of assimilation consist more of a monologue than a dialogue. At times undercurrents of aspiration appear in the "letters from readers" section of the mass media, but they are limited to bureaucratic problems of the naturalization process.

The book, *Indonesians of Chinese Origin -- Assimilation and Goal of 'One Nation - One People'* written by Dr. Stuart William Greif is worth reading, since it discusses the assimilation issue in a unique way. Greif does not use too many pages to express his views and conclusions. Comprising 88 pages, the book lays great emphasis on the perception of the subjects of assimilation. Greif presents case studies consisting of interviews with 25 individuals of Chinese origin who have acquired Indonesian citizenship.

In 1985 Greif visited several cities in Java and Bali to meet the people he interviewed. His visit was quite timely since five years before racial riots had occurred in several towns of Central Java, so that the interviewees gave multifaceted views on the assimilation problem.

Socially and economically, Greif's interviewees generally belonged to the lower middle class. They were generally well-educated, some even university graduates. They earned their living in the private sector, either as businessmen or employees. None of them worked at the government bureaucracy of BUMN (*Badan Usaha Milik Negara* = state-owned enterprises). Most of the interviewees, 22 people in all, belonged to the younger generation, only three of them were over 50 years of age. In general this group of young people claimed their views to represent a new trend, different from those of the older generation. They had gone through the trauma of the abortive communist coup of 1965 (30 September Movement of the Indonesian Communist Party), and they also regretted the stand taken by the older generation who rejected the Indonesian citizenship. Consequently they felt they had to pay dearly for the attitude of some of the older generation.

A majority of the interviewees were Protestants/Catholics, the rest being believers of Buddhism and Confucianism. This adherence to religion was motivated by their optimistic view on education. In this regard they believed that religious institutions would provide sufficiently qualified educational facilities which would compensate for their disappointment with the restriction imposed on them in state university admissions. In general they believed that the advancement they had achieved, including their Indonesian outlook and way of life, was due to education.

Those interviewed by Greif held that they no longer had any affinity with Chinese culture, or very insignificantly if any, such as in terms of food. However, they had a very high competitive spirit in business, and ap-

parently this has something to do with the overseas Chinese "culture." Some of them were still able to speak Cantonese or Hakka dialect, but could neither read nor write Chinese characters. Nevertheless, the Indonesian language has become the language spoken at home.

As to the racial riots, in general they believed that those riots were due to the problem of economic discrepancy. If citizens of Chinese origin become victims of those riots, this is due to the assumption that the Chinese have become a symbol of wealth. The following is an excerpt of Greif's interview with a thirty-year-old male from Solo (Central Java).

Q: To what would you attribute the riots of 1980?

A: More to bad luck than by design. Its background lies in economies, and the Chinese are symbols or wealth.

According to them, aside from the educational problem, the economic progress and the firm stand of the government also play an important role in solving the assimilation problem. Some of the interviewees, 10 persons, were domiciled in Jakarta. They contended that Jakarta constitute the right model for the concept of a future "assimilation city." The interviewees who lived in Bali, 3 persons, felt at ease on that island because the Balinese appreciate competition. Padang appears not so popular as an "assimilation city." If they favour Jakarta, apparently it is because the city has a deep historical background. In 1815 the Chinese population in Batavia numbered 52,394 of the total population of 332,015. Hence nearly 16 per cent of Batavia's population were Chinese (Peter Carey, "Changing Javanese Perceptions of the Chinese Communities in Central Java, 1755-1825," in *Indonesia*,

Cornell Southeast Asia Program No. 37, 1984).

Intermarriage and name changing are also considered the best means to make the assimilation process successful. As to the name changing, a 28 year old male from Jakarta interviewed by Greif said frankly that, "At that time to enhance my position in business, I legally changed my name as well."

In brief, this book contains a lot of straightforwardness, so that, on the one hand, it is very useful to serve as an input for observers and proponents of assimilation as well as for the government in formulating its policy. On the other hand, the straightforwardness expressed in this book concerning the relationship between religions may call forth erroneous responses from lay people.

However, worth noting is Greif's astuteness and ability to extract information from his 25 interviewees. Apparently the interviewees hardly distanced themselves from the interviewer. I have some personal experience in carrying out research projects on assimilation. In general the sources were reluctant to speak frankly. Without doubt Greif is quite competent in research methodology, but so are Indonesian researchers. It seems that the "cultural" factor has facilitated Greif since Westerners occupy an honorable place in the "oriental" cultural system.

In the last chapter of his book, Greif fort-rightly draws some conclusions and says among others that, "With the consolidation of its power, the new order government embarked upon a programme of rational economic development with the Chinese of Indonesia as their assistants. But there has been a price to be paid. The Chinese were

denied access to all sources of Chinese inspiration: their schools, their books, their newspapers, and sometimes their temples. They were discouraged from speaking Chinese, keeping Chinese names, and holding Chinese processions."

If this conclusion does not reflect Greif's bias, but expressed by sources not included by Greif in his case studies (the second Chapter of this book), then it will be quite amazing since nearly all of those interviewed expressed their wish for the realisation of "One Nation - One Citizenship." Those who were interviewed generally related the realisation of "one nation - one citizenship" idea

to the context of providing fair treatment in the process of naturalization and in the enjoyment of educational facilities provided by the government. Hence it should not be understood in the context of Greif's conclusion. The realisation of "One Nation - One Citizenship" in cultural terms, should refer to the concept of *Wawasan Nusantara* (Indonesian Archipelagic Concept).

Nevertheless, through his book, Greif succeeds in taking up the undercurrents of the aspiration for assimilation. That aspiration should be sifted out and channeled appropriately. In this regard, this small book by Dr. Stuart William Greif is very useful.

Resistance without Violence

Democracy and Leadership: The Rise of the Taman Siswa Movement in Indonesia by Kenji Tsuchiya. Honolulu: University of Hawaii Press, 1987, 230 pp. This review article by Abdurrachman Surjomihardjo translated from *Tempo*, 7 October 1989.

THIS book views the *Taman Siswa* Movement from the point of view of the traditional concept on "wisdom," which is derived from the Javanese word *wicaksuh* or *wicaksana*. According to the author this term may be used in reference to four kinds of situation.

Firstly, it means "wisdom" or "insight." Secondly, it is used as an honorary title for great men or kings. Thirdly, it refers

to wisdom or understanding in facing a certain situation. Fourthly, it may be used as a balance against outside control such as legal or constitutional provisions, the exercise of power deviating from the existing rules.

This concept of wisdom may be applied in a special manner by one who possesses a kind of sanctity or "supernatural power," who is referred to in Java as *pandita*, *ajar guru* and *Kyai*. They are considered as being capable of giving the right answers to problems faced by a kingdom.

It is this legitimacy to possess wisdom that had initially been vaguely inherent in the founders of *Taman Siswa*. Seen in the light of social and political events before and after the founding of *Taman Siswa*, the ideals to

realise an "orderly and peaceful society" never came true in reality. The ideal pattern of an "orderly and peaceful society" is especially intended to be the ideals of the *Taman Siswa* Movement, namely, to carry out independent education.

During the first eight years Suwardi Suryaningrat, who had previously become well-known for his involvement in radical politics, gradually came to the fore as one imbued with wisdom. That wisdom was formulated when he led the movement to oppose the Law on Illegal Schools (1932) with his famous statement that he would oppose that colonial law with all his strength without resorting to violence, and call for the readiness of the intelligentsia to make sacrifices for the right to educate their own people. The wisdom which became a code of behaviour won unexpected support among the ranks of the nationalist movement. This surprised the colonial government. In his book Prof. Kenji Tsuchiya consistently shows how the concept of wisdom became the central thought of the *Taman Siswa* leaders in the course of its development. Previously, during the period which he refers to as the "prehistory of *Taman Siswa*," he points out the influence of the political thinking on *Budi Utomo* and the *Indische Party*, which had been overshadowed by *Sarekat Islam* and the *PKI* (*Partai Komunis Indonesia* = Indonesian Communist Party) in society. The equilibrium of the "prehistory of *Taman Siswa*" was achieved when *Taman Siswa* was founded. Unifying the founders with the principles they had agreed upon, which developed into an ideology to reawaken "national culture."

This was clearly contrary to the ideology of "ethical politics" which contended that

the "light" from the West would lighten the "darkness" in the East. The system of boarding school, and *pondok pesantren* [boarding-school of Koranic studies for children and young people, ed.], and other traditional schools were referred to as models of developing a national educational system, by deliberately integrating the good elements of the experience of modern educational thinking and practice.

Beginning in Yogyakarta (as had been the case with *Muhammadiyah* ten years before), *Taman Siswa* also flourished outwards and it was obvious that its proponents came from *Budi Utomo*, and after 1927 from the *PNI* (*Partai Nasional Indonesia* = Indonesian National Party). The equilibrium achieved in Yogyakarta created a new situation after *Taman Siswa* spread over Java and Sumatra. Its National Congress was only held at the eight anniversary of that educational institution. Starting with 42 branches, it then grew into 187 branches in 1937, with 9,015 students and 459 teachers.

The author of this book has reconstructed the sources of material on the resistance against the law on illegal schools in 1932, which historically topped political crises in Indonesia. But it was also important as an interpretation of the concept of wisdom, the implementation of democracy, and leadership (democracy with leadership).

Dewantara's ideas and experience continue to be expanded and were compared with President Soekarno's Guided Democracy, which constitutes the conclusion of this book. "Soekarno's concept on Guided Democracy shows a clear similarity to Dewantara's 'democracy and leadership.' This is a reformulation of a classical paradigm

(model pattern) originating from Javanese culture. There are certainly differences between Dewantara and Soekarno. Dewantara saw the people as a 'family' for the creation of order. Soekarno saw them as 'dynamic' and 'revolutionary', the will of God, who commanded them to continuously uproot and build."

Unfortunately, the translator, who knows Japanese (the original text of the book) has a good command of neither the Indonesian language nor the history of Indonesia. Consequently, very often doubts arise about words, people's names, and names of places. But even if with difficulty, one should read and reflect upon this book.

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